

Transcript of Jarrett Waters
Conducted on February 7, 2024

1 (1 to 4)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
- - -
JOHN VANDINE and RENEE VANDINE,:NO. 2:23-cv-00027
Plaintiffs,:
vs. :CIVIL ACTION
SUMMIT TREESTANDS, LLC, and :
DICK'S SPORTING GOODS, INC., :
Defendants.:
- - -
THURSDAY, FEBRUARY, 7, 2024
- - -
Deposition of JARRETT WATERS,
held at the offices of Feldman Shepherd,
1845 Walnut Street, 21st Floor,
Philadelphia, Pennsylvania 19103,
commencing at 9:00 a.m., on the above
date, before Lisa Claud Neal, R.P.R. and
Notary Public in the Commonwealth of
Pennsylvania.
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I N D E X

DEFENDANT'S EVIDENCE
WITNESS:
JARRETT WATERS
EXAMINATION BY MR. SUTTON 6
EXAMINATION BY MR. DARIA 351
- - -

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2 (5 to 8)

5	7
1 DEPOSITION SUPPORT INDEX	1 that sentence?
2	2 A. (No audible response.)
3 DIRECTIONS NOT TO ANSWER	3 Q. That question I just asked you.
4 PAGES: None	4 A. Yes, I understood.
5	5 Q. The question was asked in a
6	6 conjunctive form; right? Do you know what I
7 REQUESTS FOR DOCUMENTS OR INFORMATION	7 mean?
8 PAGES: None	8 A. Would you explain.
9	9 Q. It has a choice. I gave you two
10	10 choices, whether you are ready for the
11 STIPULATIONS AND/OR STATEMENTS	11 deposition or whether you need more time;
12 PAGES: None	12 right?
13	13 A. Okay.
14	14 Q. Do you understand that?
15 MARKED QUESTIONS/OBJECTIONS	15 A. Yes.
16 PAGES/LINE	16 Q. And I used the term "or," right?
17 15/3 116/17 266/19 329/3 348/2	17 A. Okay. Yes.
18 65/15 150/25 272/20 329/13 349/16	18 Q. And the term "or" connotes choice,
19 65/24 157/24 273/1 333/17	19 right, or alternatives?
20 66/5 248/14 307/9 339/2	20 A. It gives an option.
21 72/5 250/18 307/16 341/2	21 Q. Okay. And that's the plain
22 83/17 259/2 311/21 341/18	22 meaning of the word "or"; right?
23 96/23 264/14 314/20 342/11	23 A. Okay.
24 107/11 266/8 321/2 346/3	24 Q. Do you agree with that?
25	25 A. Yes.
6	8
1 - - -	1 Q. Now, I understand that you've been
2 P R O C E E D I N G S	2 deposed, is it three times before; is that
3 - - -	3 right?
4	4 A. Two times, I believe. One trial.
5 JARRETT DOUGLAS WATERS, having	5 Q. You've been deposed twice and you
6 been duly sworn, was examined and	6 went through one trial; is that right?
7 testified as follows:	7 A. Correct.
8 MR. SUTTON: Please state your	8 Q. And two of those related to
9 full name, for the record.	9 this -- is it Jesus Gonzales?
10 THE WITNESS: Jarrett Waters.	10 A. That is correct.
11 MR. SUTTON: What's your middle	11 Q. And those depositions were in '21
12 name?	12 or '23; right?
13 THE WITNESS: Douglas.	13 A. That is correct.
14 MR. SUTTON: Let the record	14 Q. You've probably read a lot of
15 reflect that this is the deposition of	15 depositions in your career?
16 Jarrett Douglas Waters, taken pursuant to	16 A. That's correct.
17 the federal rules of civil procedure.	17 Q. You know the ground rules of a
18 - - -	18 deposition?
19 EXAMINATION	19 A. I do.
20 - - -	20 Q. Any time I ask you a question you
21 BY MR. SUTTON:	21 don't understand, just let me know and I'll
22 Q. Good morning, Mr. Waters. Are you	22 rephrase it, okay?
23 ready to begin, or do you need more time?	23 A. Okay.
24 A. No, I'm ready to begin.	24 Q. From time to time you're going to
25 Q. Did you understand what I meant by	25 get in a rhythm and you're going to nod your

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3 (9 to 12)

9	<p>1 head like you just did, but I need an out</p> <p>2 loud response because Ms. Neal is extremely</p> <p>3 gifted as a court reporter, but she can only</p> <p>4 take down what we say out loud, okay?</p> <p>5 A. Okay.</p> <p>6 Q. Any time you need a break I'm fine</p> <p>7 with it as long as we finish the line of</p> <p>8 questioning; is that okay?</p> <p>9 A. That's fine.</p> <p>10 Q. And, if you can just please let me</p> <p>11 finish the question before you respond,</p> <p>12 Ms. Neal, as gifted as she is, can only take</p> <p>13 down one person talking at a time, okay?</p> <p>14 A. Okay.</p> <p>15 Q. Now, I've marked as Deposition</p> <p>16 Exhibit No. 1, which is the Notice of</p> <p>17 Deposition for today, and it has a list of</p> <p>18 27 things, correct?</p> <p>19 A. Correct.</p> <p>20 (Notice of Deposition, marked</p> <p>21 Defendant's Exhibit No. 1, for</p> <p>22 identification.)</p> <p>23 BY MR. SUTTON:</p> <p>24 Q. And I received a response</p> <p>25 yesterday afternoon. Unfortunately, I no</p>	11
10	<p>1 longer had a printer because I was already</p> <p>2 here. But I will say, for the record, that</p> <p>3 Mr. Daria did respond to it. Subject to the</p> <p>4 responses and the objections placed in that,</p> <p>5 have you produced your complete file?</p> <p>6 A. Yes, I have.</p> <p>7 Q. Is there anything missing from</p> <p>8 your file whatsoever?</p> <p>9 A. There was an addition of two</p> <p>10 photographs and a video, but I believe that</p> <p>11 would have been given to you as of</p> <p>12 yesterday.</p> <p>13 Q. So I received, just for the</p> <p>14 record, on Monday I received what I was told</p> <p>15 was your complete file, and then last night,</p> <p>16 probably around dinnertime I received two</p> <p>17 additional photographs and a video; is that</p> <p>18 right?</p> <p>19 A. That's correct.</p> <p>20 Q. When were those photographs and</p> <p>21 video taken?</p> <p>22 A. Those were taken Monday of this</p> <p>23 week.</p> <p>24 Q. And where were they taken?</p> <p>25 A. At my office, in Fishers, Indiana.</p>	12
	<p>1 Q. Are there any other videos or</p> <p>2 photographs that you've taken on this case,</p> <p>3 whatsoever, that you have not produced?</p> <p>4 A. No.</p> <p>5 Q. Have any photographs of any</p> <p>6 testing or videos of any testing been</p> <p>7 deleted whatsoever?</p> <p>8 A. No.</p> <p>9 Q. Were those the only photographs of</p> <p>10 what was shown in the video taken, those two</p> <p>11 photographs?</p> <p>12 A. Those two photographs and the</p> <p>13 video were of that testing.</p> <p>14 Q. And those are the only ones that</p> <p>15 were taken?</p> <p>16 A. On Monday, yes.</p> <p>17 Q. Well, I have your complete file.</p> <p>18 And I notice you've got a number of</p> <p>19 photographs. I've deposed your office --</p> <p>20 you're at Wolf Technologies; right?</p> <p>21 A. Wolf Technical Services.</p> <p>22 Q. I'm sorry. Wolf Technical</p> <p>23 Services. And I've taken the deposition of</p> <p>24 your partner, William Dickinson, multiple</p> <p>25 types so I'm generally familiar how you put</p>	

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<p style="text-align: right;">13</p> <p>1 of the photographs shows that that cable has</p> <p>2 been what appears to be nailed to that; is</p> <p>3 that right?</p> <p>4 A. It is secured via two screws, and</p> <p>5 it is to represent the testing that</p> <p>6 Mr. Saunders conducted with a climbing cable</p> <p>7 nailed to the back of the tree.</p> <p>8 It should be noted that the cable</p> <p>9 was free to slide left and right through</p> <p>10 those screws and they simply restrain it to</p> <p>11 the back of the tree.</p> <p>12 Q. Well, in all fairness to</p> <p>13 Mr. Saunders -- first of all, in all</p> <p>14 fairness to me, this testing was not part of</p> <p>15 any of your report which was issued on</p> <p>16 November 22nd, 2023, right?</p> <p>17 A. That's correct.</p> <p>18 Q. In all fairness to Mr. Saunders,</p> <p>19 Mr. Saunders' report references one in which</p> <p>20 he tests the product in a tree while the</p> <p>21 spring is intact, right?</p> <p>22 A. That's correct. Oh, well, I'll</p> <p>23 follow up and say I haven't seen photos or</p> <p>24 videos of his testing, so I'm relying on the</p> <p>25 words in his report.</p>	<p style="text-align: right;">15</p> <p>1 not intentionally manipulate the spring in</p> <p>2 that test?</p> <p>3 MR. DARIA: Note my objection to</p> <p>4 the form.</p> <p>5 THE WITNESS: I intentionally</p> <p>6 disengaged the QuickDraw spring for that</p> <p>7 test.</p> <p>8 BY MR. SUTTON:</p> <p>9 Q. So the test, and we'll get more</p> <p>10 into this test later, but the test basically</p> <p>11 shows a disabled QuickDraw spring, one that</p> <p>12 you've intentionally taken out of its</p> <p>13 function to hold the cable in place, right?</p> <p>14 A. I -- I lowered the QuickDraw</p> <p>15 spring with my finger, which would be a use</p> <p>16 that a hunter would use while setting up or</p> <p>17 potentially inadvertently grasping the</p> <p>18 spring during the climbing phase of the</p> <p>19 setup of the treestand.</p> <p>20 Q. Well, that's how you put the stand</p> <p>21 on the tree and how you take it off is you</p> <p>22 have to pull the trigger, right?</p> <p>23 A. You do not have to pull the</p> <p>24 trigger to engage the cable into the stand.</p> <p>25 Q. Well, in order to take it off you</p>
<p style="text-align: right;">14</p> <p>1 Q. And the words in his report</p> <p>2 discuss the fact that he's testing the</p> <p>3 performance of the spring to keep that cable</p> <p>4 in place during ordinary use, right?</p> <p>5 A. The testing he describes has the</p> <p>6 QuickDraw spring in its -- in its position</p> <p>7 behind the cable stop, and has not been</p> <p>8 activated or inadvertently released from</p> <p>9 behind the cable stop.</p> <p>10 Q. Well, I haven't looked at the</p> <p>11 video. You're not suggesting the video that</p> <p>12 you have inadvertently released the --</p> <p>13 A. I'm not suggesting that video is</p> <p>14 inadvertent contact with the spring. I'm</p> <p>15 suggesting that should that spring be</p> <p>16 released and the cable be adhered, snagged,</p> <p>17 connected somehow to the tree, it is</p> <p>18 possible for the cable to slide axially</p> <p>19 within the cable bracket.</p> <p>20 Q. My question was simply, you're not</p> <p>21 suggesting you didn't intentionally</p> <p>22 manipulate the QuickDraw spring in that</p> <p>23 test, right?</p> <p>24 A. Repeat the question, please.</p> <p>25 Q. You're not suggesting that you did</p>	<p style="text-align: right;">16</p> <p>1 have to pull the trigger, right?</p> <p>2 A. On a normal functioning spring,</p> <p>3 yes, you would have to disengage the spring</p> <p>4 in order to remove the cable stop from the</p> <p>5 cable bracket.</p> <p>6 Q. And that test shows you doing</p> <p>7 exactly that, intentionally pulling the</p> <p>8 trigger to remove the spring, right?</p> <p>9 A. Yes. That shows me disengaging</p> <p>10 the cable or the QuickDraw spring, and</p> <p>11 allowing the natural stability or</p> <p>12 flexibility of the cable, on a cable that is</p> <p>13 restrained to the tree, to drive axially</p> <p>14 rearward into the cable. But, yes, I</p> <p>15 intentionally and actively disengaged the</p> <p>16 spring to represent that scenario.</p> <p>17 Q. And then in the middle of it you</p> <p>18 also intentionally changed your grip on --</p> <p>19 is that your hand in the video, by the way?</p> <p>20 A. That is my hand.</p> <p>21 Q. You intentionally change the grip</p> <p>22 on that to then push the cable out of the</p> <p>23 cable bracket, right?</p> <p>24 A. I did. The motion -- the motion</p> <p>25 secondarily would be a second grasp which</p>

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5 (17 to 20)

<p style="text-align: right;">17</p> <p>1 drives the QuickDraw spring upward.</p> <p>2 Q. But you did that intentionally,</p> <p>3 right?</p> <p>4 A. I did, yeah.</p> <p>5 Q. So in order for you to get that</p> <p>6 cable to come out of the spring you had to</p> <p>7 first nail it to the back of the tree,</p> <p>8 right?</p> <p>9 A. The fixing to the tree represents</p> <p>10 multiple scenarios of a snag or bark contact</p> <p>11 or contact with the limb. But, yes, for</p> <p>12 that specific test scenario I fixed the</p> <p>13 cable to the tree so that it could not come</p> <p>14 off the back of the tree.</p> <p>15 Q. Did you do any testing with just</p> <p>16 bark?</p> <p>17 A. I have previously, and in use of</p> <p>18 the treestands many years ago, just through</p> <p>19 normal use, but none represented in this</p> <p>20 case.</p> <p>21 Q. Are you suggesting that you</p> <p>22 previously used the cable and the cable came</p> <p>23 out in a Viper yourself?</p> <p>24 A. The Vipers that I have include</p> <p>25 safety covers. And those safety covers</p>	<p style="text-align: right;">19</p> <p>1 to get the cable to move, you had to first</p> <p>2 disengage the QuickDraw spring, right?</p> <p>3 A. Yes, I disengaged the QuickDraw</p> <p>4 spring.</p> <p>5 Q. Did you try to push it against the</p> <p>6 back of the tree when it was nailed to</p> <p>7 the -- the cable to the back of the tree</p> <p>8 when it was nailed to there? Did you try to</p> <p>9 push that backwards while the spring was</p> <p>10 present to see what happens?</p> <p>11 A. I did not.</p> <p>12 Q. And that's because you know that</p> <p>13 when the QuickDraw spring is present, the</p> <p>14 cable will just bend out of shape, it won't</p> <p>15 push to overcome the spring, right?</p> <p>16 A. If the QuickDraw spring is in its</p> <p>17 proper position and behind the cable stop,</p> <p>18 it would be very difficult for the cable to</p> <p>19 overcome the spring.</p> <p>20 Q. So what you're saying is that as</p> <p>21 far as the actual test that Mr. Saunders</p> <p>22 did, which -- to try to overcome the spring</p> <p>23 by nailing it to the back of the tree, you</p> <p>24 agree with him, you agree with those results</p> <p>25 that you can't do that?</p>
<p style="text-align: right;">18</p> <p>1 block the open keyway on the top of the</p> <p>2 cable bracket. And regardless of any axial</p> <p>3 movement of the cable within those brackets,</p> <p>4 the cable was not able to bypass or exit the</p> <p>5 keyway bracket due to that cover being</p> <p>6 closed.</p> <p>7 Q. So at no time in your personal use</p> <p>8 of a Viper treestand has the cable ever come</p> <p>9 out?</p> <p>10 A. No, it has not. But my personal</p> <p>11 use of Viper treestands are of 2002 Viper</p> <p>12 treestands that include safety covers.</p> <p>13 Q. And secondarily, for the Viper</p> <p>14 design that's been used since about 2004</p> <p>15 with a QuickDraw spring, did you do any</p> <p>16 testing to determine whether you could move</p> <p>17 the cable axially by hooking it in bark?</p> <p>18 A. I did not.</p> <p>19 Q. What about on the subject tree,</p> <p>20 did you do any testing on the subject tree</p> <p>21 to see if the subject tree had bark that was</p> <p>22 strong enough to move the cable axially?</p> <p>23 A. I did not.</p> <p>24 Q. So back to the test, if I</p> <p>25 understand the test. In order for that test</p>	<p style="text-align: right;">20</p> <p>1 A. I would agree with those results.</p> <p>2 I have not seen his photos or videos to know</p> <p>3 his exact test setup. His results do</p> <p>4 discuss bowing or flexing the cable away</p> <p>5 from the -- from the tree. Whereas, you</p> <p>6 know, there is essentially a quarter inch or</p> <p>7 so of play between the back of the cable</p> <p>8 stop and the retention spring. That</p> <p>9 distance would be taken up during that</p> <p>10 movement.</p> <p>11 Q. In other words, you can -- there's</p> <p>12 some ability to move about a quarter of an</p> <p>13 inch that cable stop within that bracket,</p> <p>14 before it hits the spring when it moves</p> <p>15 backwards?</p> <p>16 A. If the spring is properly</p> <p>17 positioned, yes.</p> <p>18 Q. But other than that, my question</p> <p>19 was, do you agree with the results of his</p> <p>20 test, that you cannot push that cable stop</p> <p>21 past the QuickDraw spring in use, even if</p> <p>22 the cable is stapled to the back of the</p> <p>23 tree?</p> <p>24 A. Pending review of his photos and</p> <p>25 videos, based on what he presented in his</p>

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<p style="text-align: right;">21</p> <p>1 report, yes, I would likely believe that.</p> <p>2 Q. Now, you just mentioned something</p> <p>3 about the cable bending axially, so let's</p> <p>4 talk about that for a moment, okay?</p> <p>5 A. Okay.</p> <p>6 Q. Now, we have a cable used in this</p> <p>7 design, which is a -- it's the 1-by-19</p> <p>8 strand; is that what it is?</p> <p>9 A. I don't recall the exact count,</p> <p>10 but that sounds familiar.</p> <p>11 Q. And the strand has some stiffness,</p> <p>12 as noted in your report, right?</p> <p>13 A. It does have some inherent</p> <p>14 stiffness. That -- observations throughout</p> <p>15 the report also discuss that inherent</p> <p>16 stiffness will be potentially degraded over</p> <p>17 time through use on different diameter trees</p> <p>18 allowing that cable to take a different</p> <p>19 permanent shape or set over time.</p> <p>20 Q. Well, there was some discussion</p> <p>21 about a kink, I think you called it, in your</p> <p>22 report, of the subject cable; is that right?</p> <p>23 A. Yes, that's correct.</p> <p>24 Q. And that's what your talking</p> <p>25 about, there is -- sometimes you can</p>	<p style="text-align: right;">23</p> <p>1 discussed in the video is a representation</p> <p>2 of that. The cable has a tendency to want</p> <p>3 to slide axially as opposed to outward into</p> <p>4 the cable bracket.</p> <p>5 Photos in my report do highlight</p> <p>6 different shapes of a cable based on new,</p> <p>7 used on larger diameter trees and used on</p> <p>8 smaller diameter trees, simply as an</p> <p>9 observation that these shapes will reduce</p> <p>10 that outward -- outward force that the cable</p> <p>11 exerts into the cable bracket.</p> <p>12 Q. So I would appreciate it if you</p> <p>13 answer the question I asked though, which</p> <p>14 is: Did you do testing of the force to</p> <p>15 determine how it was diminished in any way,</p> <p>16 over time or over use?</p> <p>17 A. I did not physically measure the</p> <p>18 force of the load cell.</p> <p>19 Q. Okay. Now, that cable system is</p> <p>20 done so there is a stiffness in the cable,</p> <p>21 as we just discussed, right?</p> <p>22 A. Correct.</p> <p>23 Q. And that stiffness allows that</p> <p>24 cable to be used in this system so that when</p> <p>25 you push it back away from the tree, if it's</p>
<p style="text-align: right;">22</p> <p>1 overload a cable to some extent so that you</p> <p>2 can put a permanent set or kink into it?</p> <p>3 A. The kink is actually not what I'm</p> <p>4 referring to by that permanent set. If you</p> <p>5 envision a U-shape where the legs of the U</p> <p>6 are parallel to one another, that is what</p> <p>7 I'm referring to by a more permanent set.</p> <p>8 The cable begins to take a tighter radius in</p> <p>9 its natural shape as compared to a new cable</p> <p>10 out of the box.</p> <p>11 Q. Regardless of the tighter radius</p> <p>12 that it's taken, it still wants to push the</p> <p>13 cable to the outside of the cable brackets</p> <p>14 in use on any size tree, right?</p> <p>15 A. The permanent set reduces the</p> <p>16 ability or reduces the outward force as that</p> <p>17 cable pushes against those cable brackets.</p> <p>18 Q. But there is still a force there,</p> <p>19 is what my question is.</p> <p>20 A. There is a force, but it is</p> <p>21 reduced as that cable takes a more permanent</p> <p>22 U-shape.</p> <p>23 Q. Did you do any testing to</p> <p>24 determine how the force is reduced?</p> <p>25 A. The -- the test that was just</p>	<p style="text-align: right;">24</p> <p>1 not stapled there like it was in your tests</p> <p>2 that it moves off into space, right?</p> <p>3 A. Yes, it would.</p> <p>4 Q. And that's a design function of</p> <p>5 this cable, right?</p> <p>6 A. Should it not be hindered by</p> <p>7 anything else on the tree or an obstruction,</p> <p>8 yes, that's the design of the cable that</p> <p>9 allows it to freely and not -- freely</p> <p>10 support itself and not sag during climbing</p> <p>11 operations.</p> <p>12 Q. And you don't want it to sag</p> <p>13 during climbing operations so it doesn't get</p> <p>14 further caught on any type stobs or bark or</p> <p>15 anything like that, right?</p> <p>16 A. It does hinder the climbing should</p> <p>17 it snag or sag.</p> <p>18 Q. So that's a good feature of this</p> <p>19 treestand, right?</p> <p>20 A. That is a benefit of this</p> <p>21 treestand.</p> <p>22 Q. Now, the cable also is a column</p> <p>23 that can bend out of shape if too much force</p> <p>24 is placed on it, right?</p> <p>25 A. In essence, yes.</p>

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7 (25 to 28)

<p style="text-align: right;">25</p> <p>1 Q. So earlier we talked about the</p> <p>2 fact that Mr. Saunders did some tests that</p> <p>3 you agree are likely appropriate. You</p> <p>4 haven't seen the photographs and the videos</p> <p>5 yet, but the description seems to be likely</p> <p>6 appropriate, that show that even if you</p> <p>7 stapled this cable to the back of the tree</p> <p>8 and you try to push it to overcome the</p> <p>9 spring, you can't do that. Right?</p> <p>10 A. The testing seems consistent with</p> <p>11 that you will not be able to overcome the</p> <p>12 spring.</p> <p>13 Q. And one of the things that you</p> <p>14 said earlier on is that there is some</p> <p>15 bending moment in these cables that will</p> <p>16 start to push the cables out of shape rather</p> <p>17 than push the spring back, or push the cable</p> <p>18 past the spring, right?</p> <p>19 A. There is some flex that occurs in</p> <p>20 those cables during that specific scenario</p> <p>21 where it's affixed to the back of the tree.</p> <p>22 That flex is determined upon the initial</p> <p>23 state of the cable on whether what shape or</p> <p>24 how parallel the legs are naturally.</p> <p>25 Additionally, the diameter of tree</p>	<p style="text-align: right;">27</p> <p>1 case. And does that appear to be complete?</p> <p>2 A. (No audible response.)</p> <p>3 Q. And I do note that you're looking</p> <p>4 at added to the report -- if you give me</p> <p>5 that copy -- is your C.V. and your --</p> <p>6 A. It also includes Mr. Dickinson's</p> <p>7 C.V.</p> <p>8 Q. Yeah. So let me remove those</p> <p>9 parts.</p> <p>10 It's also your rate. I think</p> <p>11 there's a statement of rate in here. So let</p> <p>12 me remove those parts so you just have the</p> <p>13 report which you can look at if you need to.</p> <p>14 I see that you have one in front of you that</p> <p>15 may be easier for you to go through, but I</p> <p>16 wanted to make sure you have that copy as</p> <p>17 well as I ask questions. Okay?</p> <p>18 A. Okay. Thank you.</p> <p>19 (Report, marked Defendant's</p> <p>20 Exhibit No. 3, for identification.)</p> <p>21 BY MR. SUTTON:</p> <p>22 Q. Now, if you looked through the</p> <p>23 report, we get to page 10 -- before we get</p> <p>24 there. Were you given a copy of the</p> <p>25 protective order in this case?</p>
<p style="text-align: right;">26</p> <p>1 can affect its natural tangent as it comes</p> <p>2 off the tree and change the angle that it</p> <p>3 acts on the cable bracket.</p> <p>4 Q. But one of the design features of</p> <p>5 the cable assembly is that as you push back</p> <p>6 away from the tree and toward the user, that</p> <p>7 if as you apply more force those cables will</p> <p>8 bend out of line, right?</p> <p>9 A. If the QuickDraw spring is</p> <p>10 properly positioned behind cable stop, yes.</p> <p>11 Q. In other words, the springs will</p> <p>12 hold the cable in place, and the cable will</p> <p>13 then bend, right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Now, I want to show you</p> <p>16 what we've marked as Exhibit 2, which was</p> <p>17 sent to me as your list of testimony that</p> <p>18 you've given. That's complete, right?</p> <p>19 A. Yes, that's complete.</p> <p>20 (List of testimony given, marked</p> <p>21 Defendant's Exhibit No. 2, for</p> <p>22 identification.)</p> <p>23 BY MR. SUTTON:</p> <p>24 Q. Now, I show you Exhibit 3 that</p> <p>25 we've marked which is your report in this</p>	<p style="text-align: right;">28</p> <p>1 A. I don't recall.</p> <p>2 Q. Okay. Because I note on page 10</p> <p>3 you have copied one of the drawings directly</p> <p>4 into your report. And the drawing is listed</p> <p>5 as confidential; do you see that?</p> <p>6 A. I do see that.</p> <p>7 Q. Is there any reason why you didn't</p> <p>8 mark your report, which includes some</p> <p>9 confidential information of my client,</p> <p>10 Summit Treestands, as confidential?</p> <p>11 A. The report was prepared for</p> <p>12 Mr. Daria and not a public report that was</p> <p>13 disseminated across public outlet. The</p> <p>14 provided drawing was included in the</p> <p>15 defense's production and was a part of my</p> <p>16 file.</p> <p>17 Q. Well, I understand that it was</p> <p>18 included in the defense's production, but it</p> <p>19 was included as part -- under a protective</p> <p>20 order to keep, maintain its confidentiality;</p> <p>21 do you understand that?</p> <p>22 A. I understand that.</p> <p>23 Q. And as part of the confidentiality</p> <p>24 order you were allowed to have access to it</p> <p>25 because you're an expert witness for the</p>

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8 (29 to 32)

<p style="text-align: right;">29</p> <p>1 plaintiffs; do you understand that?</p> <p>2 A. I do not recall seeing a copy of</p> <p>3 this confidential order. I understand the</p> <p>4 premise of one, but, as far as the exact</p> <p>5 words of the order you are referencing, I'm</p> <p>6 not familiar with it.</p> <p>7 Q. Well, since this document includes</p> <p>8 confidential design drawings from my client,</p> <p>9 I would ask that it be marked confidential</p> <p>10 and kept by your office confidential as</p> <p>11 required under the protective order. Is</p> <p>12 that okay?</p> <p>13 A. That's fine.</p> <p>14 MR. DARIA: And I'll note, for</p> <p>15 the record, that this report has not been</p> <p>16 disseminated to any place or anyone other</p> <p>17 than defense counsel and my office in</p> <p>18 accordance with the confidentiality order.</p> <p>19 MR. SUTTON: And folks at Wolf</p> <p>20 Technologies, right?</p> <p>21 THE WITNESS: Correct. It has</p> <p>22 not left the office or our servers.</p> <p>23 BY MR. SUTTON:</p> <p>24 Q. And just so we are on the same</p> <p>25 page you will advise Wolf Technical Services</p>	<p style="text-align: right;">31</p> <p>1 A. I am not a member.</p> <p>2 Q. You understand, do you not, that</p> <p>3 ASTM has a specific subcommittee that</p> <p>4 promulgates standards pertaining to</p> <p>5 treestands and treestand-related products?</p> <p>6 A. I understand that ASTM has adopted</p> <p>7 and worked in conjunction with many of the</p> <p>8 older TMS standards and a lot of the</p> <p>9 verbiage is consistent through those. I'm</p> <p>10 assuming that it is through a subcommittee</p> <p>11 within ASTM.</p> <p>12 Q. Do you know one way or the other</p> <p>13 how ASTM works to develop its standards?</p> <p>14 A. I do not know their specific</p> <p>15 procedure for developing standards.</p> <p>16 Q. Do you understand, generally, that</p> <p>17 they are a peer reviewed standard</p> <p>18 organization?</p> <p>19 A. Yes, I do.</p> <p>20 Q. That it requires publication and</p> <p>21 comment of its members to pass a standard?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And that ASTM is made up of over</p> <p>24 20,000 members?</p> <p>25 A. I am not familiar with how many</p>
<p style="text-align: right;">30</p> <p>1 that this is confidential and can't be</p> <p>2 disseminated, right?</p> <p>3 A. I will be happy to.</p> <p>4 Q. Thank you.</p> <p>5 Now, there is mention in here of</p> <p>6 ASTM. In your report, I mean.</p> <p>7 A. That's correct.</p> <p>8 Q. Are you familiar with ASTM?</p> <p>9 A. I am familiar with their standards</p> <p>10 and the application of their standards and</p> <p>11 have used their standard for application of</p> <p>12 safety, warnings, decals and informational</p> <p>13 placards.</p> <p>14 Q. ASTM is an international standards</p> <p>15 organization; is it not?</p> <p>16 A. Yes, I believe it is.</p> <p>17 Q. One of the largest in world,</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Been around for over a hundred</p> <p>21 years, right?</p> <p>22 A. I'm not familiar with their</p> <p>23 inception date, but I would believe it if</p> <p>24 you told me.</p> <p>25 Q. Are you a member?</p>	<p style="text-align: right;">32</p> <p>1 members there are, but I would believe that.</p> <p>2 Q. Do you understand that ASTM</p> <p>3 subcommittees are set and allow people to</p> <p>4 take part in the subcommittees if they</p> <p>5 apply?</p> <p>6 A. That seems reasonable.</p> <p>7 Q. Have you ever applied to take part</p> <p>8 of any of the ASTM subcommittees relating to</p> <p>9 treestands?</p> <p>10 A. I have not.</p> <p>11 Q. Have you ever attempted to comment</p> <p>12 or write the subcommittee related to any</p> <p>13 comments on any ASTM standards?</p> <p>14 A. I have not.</p> <p>15 Q. Now, you indicated that the ASTM</p> <p>16 worked in conjunction with, is it the</p> <p>17 Treestand Manufacturer's Association?</p> <p>18 A. I believe that's the correct</p> <p>19 acronym. It was the original set of</p> <p>20 standards providing recommendations and</p> <p>21 governance for the treestand community. But</p> <p>22 I believe TMA and TMS had a conjunction of</p> <p>23 standards that were later adopted and</p> <p>24 converted into ASTM standards.</p> <p>25 Q. Do you know who wrote the original</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

9 (33 to 36)

<p style="text-align: right;">33</p> <p>1 standards?</p> <p>2 A. I do not know the original author.</p> <p>3 Q. Do you have any criticisms of</p> <p>4 those standards?</p> <p>5 A. I think the standards are a</p> <p>6 minimum, as far as safety concerns go. I</p> <p>7 think that the standards are a</p> <p>8 recommendation to the manufacturer of what</p> <p>9 the first step should be in determining</p> <p>10 proper and safe care as far as the design</p> <p>11 and then the application of instructions and</p> <p>12 labels and warnings are adhered to the</p> <p>13 product.</p> <p>14 I do know the standards often use</p> <p>15 verbiage that say it is up to the</p> <p>16 manufacturer to assess these standards for</p> <p>17 their specific design and how these</p> <p>18 standards could be furthered based on that</p> <p>19 design, and that these standards are the</p> <p>20 bare minimum for safety recommendations.</p> <p>21 Q. Does the phrase "bare minimum"</p> <p>22 appear in any of the treestand standards?</p> <p>23 A. I do not believe the phrase "bare</p> <p>24 minimum" is verbatim from those standards.</p> <p>25 Q. And that wasn't my question, in</p>	<p style="text-align: right;">35</p> <p>1 A. The standards regarding safety and</p> <p>2 safety devices I would argue affect the</p> <p>3 design of the stand.</p> <p>4 Q. Well, isn't it true that the</p> <p>5 standards give -- leave the design up to the</p> <p>6 manufacturer?</p> <p>7 A. The standard does not tell you how</p> <p>8 to design a product, that is correct. The</p> <p>9 manufacturer is required to review the</p> <p>10 standard and interpret and apply that to</p> <p>11 their designs.</p> <p>12 Q. And their standards have a</p> <p>13 requirement for performance criteria, right?</p> <p>14 A. There is a set of performance</p> <p>15 criteria that the standards do outline.</p> <p>16 Q. For instance, they have repetitive</p> <p>17 load tests for climbing stands, right?</p> <p>18 A. They have repetitive -- and I will</p> <p>19 call them static load tests. Not all of the</p> <p>20 functions of the stand are actuated during</p> <p>21 those repetitive tests.</p> <p>22 Q. Okay. But I just asked you</p> <p>23 whether they had repetitive load tests.</p> <p>24 They do, right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">34</p> <p>1 any event. My question was: Do you have</p> <p>2 any criticism of the treestand related</p> <p>3 standards of ASTM?</p> <p>4 A. I do not have any direct criticism</p> <p>5 of the standards themselves. I have</p> <p>6 criticisms on how manufacturers choose to</p> <p>7 interpret the standards and apply them to</p> <p>8 their products.</p> <p>9 Q. But the standards themselves you</p> <p>10 do not have any criticisms of, fair?</p> <p>11 A. Correct.</p> <p>12 Q. Now, you're not suggesting that</p> <p>13 ASTM is promulgating standards that they</p> <p>14 believe don't help manufacturers make safe</p> <p>15 products, do you?</p> <p>16 A. They set guidelines and</p> <p>17 recommendations for safe products. The</p> <p>18 standards do not cover all design scenarios</p> <p>19 and therefore there's verbiage in several of</p> <p>20 the standards that rely or instruct the</p> <p>21 manufacturer to adhere to these and take</p> <p>22 further steps based on those specific</p> <p>23 designs.</p> <p>24 Q. Well, they're performance</p> <p>25 standards not design standards, right?</p>	<p style="text-align: right;">36</p> <p>1 Q. Where they repetitively load the</p> <p>2 product thousands of times, right?</p> <p>3 A. That's correct.</p> <p>4 Q. They also have load tests, right?</p> <p>5 A. Yes.</p> <p>6 Q. And they include a factor of</p> <p>7 safety in the industry of 2.0, right?</p> <p>8 A. That sounds correct.</p> <p>9 Q. And that's reasonable in this</p> <p>10 industry, right?</p> <p>11 A. I would argue that it could be</p> <p>12 higher given that this is an aerial platform</p> <p>13 and it is something somebody is relying on</p> <p>14 for their safety and securement from an</p> <p>15 aerial position, but 2.0 is definitely a</p> <p>16 good starting point.</p> <p>17 Q. Well, that's a standard that the</p> <p>18 ASTM subcommittee subjected to peer review</p> <p>19 in their industry and asked for comment, and</p> <p>20 that's what they determined, 2.0 was a</p> <p>21 required factor of safety in this specific</p> <p>22 industry. And that's from the folks that</p> <p>23 work in this industry, right?</p> <p>24 A. That sounds appropriate.</p> <p>25 Q. Okay. And you don't disagree that</p>

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Transcript of Jarrett Waters
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10 (37 to 40)

<p style="text-align: right;">37</p> <p>1 they set that factor of safety</p> <p>2 appropriately, do you?</p> <p>3 A. I think it is a good minimum</p> <p>4 standard and it is up to the manufacturer to</p> <p>5 determine whether the factor of safety is</p> <p>6 applicable to their design, and that they</p> <p>7 should be going above and beyond what the</p> <p>8 recommended minimum set forth by the</p> <p>9 standards are.</p> <p>10 Q. You're not suggesting to the jury</p> <p>11 that ASTM would promulgate or adopt</p> <p>12 standards that would allow product that was</p> <p>13 not safe for its intended use to be placed</p> <p>14 on the market?</p> <p>15 A. Please repeat the question.</p> <p>16 Q. You're not suggesting that ASTM</p> <p>17 would promulgate or adopt standards that</p> <p>18 would allow a product that was not safe for</p> <p>19 its intended use to be placed on the market?</p> <p>20 A. I'm not suggesting that ASTM set</p> <p>21 forth standards that were dangerous, or</p> <p>22 allow for designs to be inadequate. These</p> <p>23 are minimums that the manufacturer should</p> <p>24 rely on in order to guide their designs.</p> <p>25 And the standards cannot address all of the</p>	<p style="text-align: right;">39</p> <p>1 well over five, was it not?</p> <p>2 A. I recall it being high. I do not</p> <p>3 recall the exact number for that testing.</p> <p>4 Q. Let's talk a little bit about the</p> <p>5 ASTM certification process used by the</p> <p>6 Treestand Manufacturers Association. Are</p> <p>7 you familiar with that?</p> <p>8 A. I am familiar with the documents</p> <p>9 provided today regarding the scientific</p> <p>10 laboratory -- not -- sorry.</p> <p>11 Q. Scientific testing labs?</p> <p>12 A. Yes. But you did not -- those</p> <p>13 documents were not provided today. They</p> <p>14 were provided originally in discovery. I am</p> <p>15 familiar with those documents. I am not</p> <p>16 familiar with the intricacies of that</p> <p>17 process.</p> <p>18 Q. Have you ever been involved in the</p> <p>19 certification process of any treestand?</p> <p>20 A. I have not.</p> <p>21 Q. Do you know how that process</p> <p>22 works?</p> <p>23 A. I have not been involved with that</p> <p>24 process.</p> <p>25 Q. That's not my question. My</p>
<p style="text-align: right;">38</p> <p>1 intricacies or design features of each</p> <p>2 specific manufactured product.</p> <p>3 Q. Would you agree with me that the</p> <p>4 whole point of industry standards such as</p> <p>5 those adopted by ASTM is to provide guidance</p> <p>6 to manufacturers in making safe products?</p> <p>7 A. Yes, I would.</p> <p>8 Q. And it also is to provide</p> <p>9 manufacturers with guidelines for good</p> <p>10 engineering and design practices?</p> <p>11 A. Yes.</p> <p>12 Q. Have you ever in your career been</p> <p>13 involved in the development of any</p> <p>14 standards?</p> <p>15 A. Of standards, no.</p> <p>16 Q. Now, we talked a little bit about</p> <p>17 factor of safety and we talked a little bit</p> <p>18 about the cable assembly. You have, in</p> <p>19 fact, in other cases, tested the Summit</p> <p>20 Viper cable to determine its factor of</p> <p>21 safety; have you not?</p> <p>22 A. I have assisted in testing of</p> <p>23 Summit climbing cable and their factor of</p> <p>24 safety or their overall tensile strength.</p> <p>25 Q. And their factor of safety was</p>	<p style="text-align: right;">40</p> <p>1 question is: Do you know how the process</p> <p>2 works?</p> <p>3 A. It is my understanding that it is</p> <p>4 a process where a product is sent to an</p> <p>5 independent laboratory for evaluation. That</p> <p>6 independent laboratory provides a report,</p> <p>7 and based on some of the discovery materials</p> <p>8 provided, it essentially winds up being a</p> <p>9 self-certification of adherence to the</p> <p>10 provided standards.</p> <p>11 Q. Why do you say</p> <p>12 "self-certification"?</p> <p>13 A. I believe Summit's name is on the</p> <p>14 provided report. So they are a part of the</p> <p>15 evaluation, as far as the certification</p> <p>16 goes.</p> <p>17 Q. Mr. Waters, you know, do you not,</p> <p>18 that these products are sent to third-party</p> <p>19 testing labs, right?</p> <p>20 A. That's what the photos suggest,</p> <p>21 yes.</p> <p>22 Q. That these are engineering labs</p> <p>23 that specialize in testing, right?</p> <p>24 A. Yes.</p> <p>25 Q. That that product is reviewed for</p>

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Transcript of Jarrett Waters
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11 (41 to 44)

41	<p>1 performance testing pursuant to the ASTM</p> <p>2 standards?</p> <p>3 A. To the provided standards, yes.</p> <p>4 Q. The harness is subjected to</p> <p>5 testing, true?</p> <p>6 A. I believe it is.</p> <p>7 Q. It has its own set of standards</p> <p>8 for performance, right?</p> <p>9 A. That's correct.</p> <p>10 Q. Quality control plan of the</p> <p>11 manufacturer is reviewed, true?</p> <p>12 A. It should be, yes.</p> <p>13 Q. The instruction manual and</p> <p>14 warnings are reviewed, true?</p> <p>15 A. That's my understanding.</p> <p>16 Q. And the certification process at</p> <p>17 the end of which that lab signs a report</p> <p>18 certifying that that treestand meets or</p> <p>19 exceeds industry standards which are ASTM</p> <p>20 standards, right?</p> <p>21 A. I believe they do, yes.</p> <p>22 Q. And those are testing labs that</p> <p>23 specialize in testing goods such as</p> <p>24 treestands, right?</p> <p>25 A. They test according to the</p>	43
42	<p>1 standards. They do not test all the design</p> <p>2 features within an existing product.</p> <p>3 Q. I'm talking about the ASTM</p> <p>4 certification process. These are labs that</p> <p>5 are set up and specifically outlined to be</p> <p>6 companies that can certify these products,</p> <p>7 right?</p> <p>8 A. That's my understanding.</p> <p>9 Q. Now, are you aware that the</p> <p>10 testing process allows substitution of test</p> <p>11 results?</p> <p>12 A. I am not aware.</p> <p>13 Q. So for instance if we say -- let's</p> <p>14 say I have a manufacturer, ABC, that's</p> <p>15 manufacturing a series of Hang-On</p> <p>16 treestands. Do you know what a Hang-On</p> <p>17 treestand is?</p> <p>18 A. I do.</p> <p>19 Q. A Hang-On treestand is a treestand</p> <p>20 which has a platform and a seat that's</p> <p>21 attached to a tree and you need to climb it</p> <p>22 to get up into, right?</p> <p>23 A. That's correct.</p> <p>24 Q. Let's say they submit it, and they</p> <p>25 have got six different models of that stand;</p>	44
	<p>1 are you with me?</p> <p>2 A. I'm with you.</p> <p>3 Q. Each of them uses the same</p> <p>4 harness, right?</p> <p>5 A. Okay.</p> <p>6 Q. The lab tests the harness because</p> <p>7 it's the same. It doesn't have to test six</p> <p>8 different harnesses because they're all the</p> <p>9 same model that's being used, right?</p> <p>10 A. Okay.</p> <p>11 Q. Does that make sense?</p> <p>12 A. That makes sense. However, the</p> <p>13 testing for -- the harness has its own model</p> <p>14 number as compared to each one of the model</p> <p>15 treestands that has a different model</p> <p>16 number, and so if a set or an assembled</p> <p>17 product includes that model number of</p> <p>18 harness then it would make sense that that</p> <p>19 model number would be certified via these</p> <p>20 testings and be applicable to all these</p> <p>21 different products.</p> <p>22 Q. I'm just giving you an example of</p> <p>23 a certification where one product that's now</p> <p>24 used in multiple different models, they</p> <p>25 don't retest six times. They just use the</p>	

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Transcript of Jarrett Waters
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12 (45 to 48)

45	<p>1 some situations the exact same one is just</p> <p>2 given a different model number or part</p> <p>3 number because it's used in a different</p> <p>4 vehicle but it's structurally exactly the</p> <p>5 same?</p> <p>6 A. It may be assigned a different</p> <p>7 part number from the automaker that installs</p> <p>8 it as it is their OMA part number, but</p> <p>9 whichever vender supplies that seatbelt to</p> <p>10 that automaker can sell it under the same</p> <p>11 part number.</p> <p>12 Q. Okay. Let's back up a little bit,</p> <p>13 back to the treestand industry. Are you</p> <p>14 aware that the treestand industry -- we were</p> <p>15 using a hypothetical company called ABC</p> <p>16 Manufacturing which sells certain fixed</p> <p>17 position stands, right?</p> <p>18 A. Okay.</p> <p>19 Q. Do you understand that that</p> <p>20 company may sell the exact same stand under</p> <p>21 three different or more model numbers?</p> <p>22 A. That seems logical.</p> <p>23 Q. For instance, it might sell one</p> <p>24 that has a -- an attachment that has -- for</p> <p>25 a rifle, or to hold a bow, and sell it as a</p>	47	<p>1 its form, fit or function has changed.</p> <p>2 Q. Well, I'm not talking about other</p> <p>3 industries. I'm talking about this</p> <p>4 industry. You don't know whether or not</p> <p>5 that's allowed, right?</p> <p>6 A. I'm saying from an engineering</p> <p>7 perspective --</p> <p>8 Q. That's not my question. I'm</p> <p>9 asking you about whether or not in this</p> <p>10 industry do you know that that's allowed?</p> <p>11 A. I do not know what the standard</p> <p>12 practice is for reusing model numbers or</p> <p>13 changing model numbers on treestand</p> <p>14 products.</p> <p>15 Q. Let me ask you this question: You</p> <p>16 said in other industries that if the fit,</p> <p>17 form or function changes, a model has to be</p> <p>18 retested, right?</p> <p>19 A. That is my familiarity with</p> <p>20 different industries, yes.</p> <p>21 Q. So if I change the camouflage</p> <p>22 pattern on a seat, in a Viper treestand,</p> <p>23 from Realtree to Mossy Oak, how does the</p> <p>24 fit, form or function of that stand change?</p> <p>25 A. So the way that would be addressed</p>
46	<p>1 different be model number?</p> <p>2 A. Okay.</p> <p>3 Q. It might sell one that has a Mossy</p> <p>4 Oak pattern in it and one that has a</p> <p>5 Realtree pattern under different model</p> <p>6 numbers, right?</p> <p>7 A. Okay.</p> <p>8 Q. It may offer the same model number</p> <p>9 under different names to different</p> <p>10 manufacturers -- I'm sorry, to different</p> <p>11 retailers; you understand that?</p> <p>12 A. I believe I do.</p> <p>13 Q. And you're aware, are you not,</p> <p>14 because if you worked on other cases, that</p> <p>15 if the structure is the exact same on these</p> <p>16 stands you do not have to retest every</p> <p>17 single model number even though these are</p> <p>18 different named products or different model</p> <p>19 products?</p> <p>20 A. In the industries I'm familiar</p> <p>21 with a model number change indicates a</p> <p>22 change in form, fit or function of the</p> <p>23 product. And when we change model numbers,</p> <p>24 that implies a new testing regime, and a new</p> <p>25 set of evaluations for that product because</p>	48	<p>1 in industries I'm familiar with that would a</p> <p>2 revision. So let's say you have a Revision</p> <p>3 A that was released to the public. That</p> <p>4 would go to Revision B if something</p> <p>5 aesthetically is changed.</p> <p>6 The model number would still stay</p> <p>7 the same. The revision would be upgraded or</p> <p>8 rolled to the next Rev because that</p> <p>9 component could still be a direct</p> <p>10 replacement for the component that it</p> <p>11 originally was tested as.</p> <p>12 I'm familiar with model number</p> <p>13 changes as a form, fit or function change</p> <p>14 and, therefore, something -- something has</p> <p>15 changed on the product that does not allow</p> <p>16 the new product to take the place of the old</p> <p>17 product. It is not a drop-in replacement.</p> <p>18 Q. Okay. But that's not my question.</p> <p>19 My question was specific to this industry,</p> <p>20 and the change of a pattern on a seat. Do</p> <p>21 you understand what I mean, the difference</p> <p>22 between Mossy Oak and Realtree?</p> <p>23 A. I do understand that.</p> <p>24 Q. Are you a hunter?</p> <p>25 A. I am.</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

13 (49 to 52)

49	<p>1 Q. You understand that there's two</p> <p>2 different most popular camo patterns, right?</p> <p>3 A. There's a lot more than two, but</p> <p>4 yes.</p> <p>5 Q. But the two most popular are</p> <p>6 Realtree and Mossy Oak, right?</p> <p>7 A. Depending on the part of the</p> <p>8 country you're in, yes.</p> <p>9 Q. And so some folks may want a stand</p> <p>10 with Mossy Oak seat or camouflage and some</p> <p>11 may want it with Realtree, right?</p> <p>12 A. Okay.</p> <p>13 Q. Do you understand?</p> <p>14 A. I understand that.</p> <p>15 Q. And that is something that happens</p> <p>16 in this industry, right?</p> <p>17 A. I understand that.</p> <p>18 Q. Okay. So my question to you is if</p> <p>19 I'm merely changing the camo pattern on the</p> <p>20 seat, how does that change the fit, form or</p> <p>21 function of the treestand itself?</p> <p>22 A. The camo pattern does not change</p> <p>23 the performance of the structure of the</p> <p>24 stand. I agree to that.</p> <p>25 The issue becomes if we are not</p>	51
50	<p>1 tracking components with a model number that</p> <p>2 is consistent with what is in the testing,</p> <p>3 there is no transparency for the testing and</p> <p>4 folks that receive the paperwork don't have</p> <p>5 an understanding of what product was</p> <p>6 actually tested or model was tested.</p> <p>7 Q. But you've had the opportunity to</p> <p>8 be produced in this case to look at the</p> <p>9 design drawings for the Viper, right?</p> <p>10 A. That's correct.</p> <p>11 Q. And the Viper with the QuickDraw</p> <p>12 spring and the bracket has been in existence</p> <p>13 since about 2004, right?</p> <p>14 A. Yes.</p> <p>15 Q. The actual design of the treestand</p> <p>16 itself hasn't changed much since that time,</p> <p>17 right?</p> <p>18 A. The physical design of the stand,</p> <p>19 no, has not changed much over time.</p> <p>20 Q. And you're aware that that design</p> <p>21 has been tested multiple times, well over</p> <p>22 ten times by different companies</p> <p>23 specializing in testing to industry</p> <p>24 standards, right?</p> <p>25 A. That's what you're representing to</p>	52
	<p>1 me. I don't have access to all those other</p> <p>2 tests.</p> <p>3 Q. You're not aware of that, that</p> <p>4 that's the case?</p> <p>5 A. It would make sense that they're</p> <p>6 tested in that manner. I have not seen</p> <p>7 documents that prove that.</p> <p>8 Q. Okay. And those companies have</p> <p>9 always universally certified the Viper</p> <p>10 product as passing industry standards, true?</p> <p>11 A. That would be my understanding</p> <p>12 given that there are labeling on the product</p> <p>13 that says that it passed those standards.</p> <p>14 Q. Now, let's talk a little bit for a</p> <p>15 second about the certification of warning</p> <p>16 labels which you have in your report. Do</p> <p>17 you know how that process works?</p> <p>18 A. The process of selecting warning</p> <p>19 labels or the process of how the standard</p> <p>20 was developed?</p> <p>21 Q. Either.</p> <p>22 A. I have experience selecting</p> <p>23 warning labels for applicable uses and</p> <p>24 applying them to products, yes.</p> <p>25 Q. Do you have any experience in this</p>	

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14 (53 to 56)

<p style="text-align: right;">53</p> <p>1 provided in the ASTM standard.</p> <p>2 Q. We'll get to that again because we</p> <p>3 have a disagreement on that. My question</p> <p>4 relates to the folks that are specifically</p> <p>5 asked to look at this and understand the</p> <p>6 certification process and have the</p> <p>7 experience, which you do not, in certifying</p> <p>8 this product have looked at that, and</p> <p>9 repeatedly passed this under the ASTM</p> <p>10 standards, true?</p> <p>11 A. That is true.</p> <p>12 Q. And also the TMS standards that</p> <p>13 existed before the ASTM standards?</p> <p>14 A. They did pass it, yes.</p> <p>15 Q. And you would acknowledge that</p> <p>16 although you disagree with them, that they</p> <p>17 believe it does meet the standard, right?</p> <p>18 A. I would acknowledge at the time</p> <p>19 they believe -- it met the standard, yet I</p> <p>20 will bring up that it is interesting that</p> <p>21 treestands and Summit, in general, have gone</p> <p>22 to a fixed position warning label that is on</p> <p>23 the V brace and it's upright in a manner</p> <p>24 that would comply more with the verbiage</p> <p>25 outlined in the ASTM standard.</p>	<p style="text-align: right;">55</p> <p>1 warnings and instructions so that they meet</p> <p>2 new trends?</p> <p>3 A. I am suggesting that if Summit</p> <p>4 thought their warning was adequate or</p> <p>5 complied with these standards they would</p> <p>6 have simply added the QR code to the label</p> <p>7 on the seat as opposed to addressing a new</p> <p>8 version of label that's adhered to the</p> <p>9 structure of the stand.</p> <p>10 Q. Let's talk about that for a</p> <p>11 second. Do you know who develops that, you</p> <p>12 know, whether it's a third party that</p> <p>13 develops and sells that specific QR code and</p> <p>14 access system?</p> <p>15 A. I do not know the development of</p> <p>16 the QR code.</p> <p>17 Q. Do you know if they're even</p> <p>18 capable of putting it on a label like that?</p> <p>19 A. I would assume they are.</p> <p>20 Q. Okay. Have you seen a QR code</p> <p>21 that looks any different than what's on the</p> <p>22 present day products which were well after</p> <p>23 the 2015 manufacture of this product on any</p> <p>24 other treestands?</p> <p>25 A. I'm sorry, can you rephrase that?</p>
<p style="text-align: right;">54</p> <p>1 Q. In actuality, you're talking about</p> <p>2 what's known as an interactive warning</p> <p>3 system; are you aware of that?</p> <p>4 A. The one that includes the QR code?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. In fact, as an engineer you know</p> <p>8 that many warnings are going to QR codes</p> <p>9 because they're very easily accessible on</p> <p>10 cell phones, et cetera, right?</p> <p>11 A. I do understand that.</p> <p>12 Q. In fact, if you take your iPhone</p> <p>13 and you use the camera function and you</p> <p>14 highlight a QR code with it, it gives you</p> <p>15 the link to pull up those instructions and</p> <p>16 warnings, right?</p> <p>17 A. For folks that have an iPhone or a</p> <p>18 smartphone, yes.</p> <p>19 Q. And that's something that's been</p> <p>20 developed in the last five or six years</p> <p>21 that's really been pushed home, right?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. And you're not critical of a</p> <p>24 manufacturer moving with the system or the</p> <p>25 industry and the times and updating its</p>	<p style="text-align: right;">56</p> <p>1 Q. This new QR interactive warning</p> <p>2 system --</p> <p>3 A. Correct.</p> <p>4 Q. -- is something that's not</p> <p>5 prevalently used in the industry, that's</p> <p>6 only been developed in the last few years.</p> <p>7 Are you aware of that?</p> <p>8 A. I'm aware that it's not on older</p> <p>9 treestands, but it is on treestands of</p> <p>10 multiple brands.</p> <p>11 Q. Did you know it didn't exist in</p> <p>12 2015 when this product was manufactured?</p> <p>13 A. I do not know if it existed or not</p> <p>14 in 2015, the QR code.</p> <p>15 Q. Now, do you know whether anybody</p> <p>16 in the industry had used a QR code back in</p> <p>17 2015?</p> <p>18 A. I do not know.</p> <p>19 Q. Now, I've read through your</p> <p>20 report, and it appears that as to warnings</p> <p>21 and instructions, the only criticism you</p> <p>22 have on any of the warnings and instructions</p> <p>23 is the placement of that warning label on</p> <p>24 the seat, true?</p> <p>25 A. With regards to the application of</p>

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Conducted on February 7, 2024

15 (57 to 60)

<p style="text-align: right;">57</p> <p>1 that standard, yes. The verbiage within the 2 standard was not adhered to as far as where 3 the warning was positioned on the climbing 4 treestand. 5 Q. We'll get to that in a moment 6 because frankly, I think that you're 7 misreading the standard, but regardless of 8 that I'm asking you about the content. You 9 don't have any criticisms of the content of 10 the warnings given by Summit whatsoever, do 11 you? 12 A. The content on the seat label? 13 Q. Or on the instruction manuals. 14 A. I feel like the content on the 15 seat label does not address some of specific 16 instructions that is highlighted within the 17 instruction manual, such as the inspection 18 of the cable stops within the cable bracket, 19 and I feel like the warning label doesn't 20 address the -- doesn't address and doesn't 21 instruct the user to avoid contact with the 22 QuickDraw retention spring through the use 23 of the product. 24 Q. Is that anywhere in Exhibit 3 of 25 your report anywhere? What you just said</p>	<p style="text-align: right;">59</p> <p>1 and talk a little bit about your opinion 2 that you're saying this doesn't need any 3 more additions. You have no opinions about 4 manufacturing defects whatsoever, right? 5 A. Manufacturing defect. 6 Q. In other words, you're not 7 claiming that the product wasn't 8 manufactured in accordance with the design 9 drawings, right? 10 A. That's correct. 11 Q. Incidentally, the 2002 Viper, how 12 many of those did you personally own? 13 A. I have two that I possess. 14 Q. And have you used those in 15 hunting? 16 A. I have. 17 Q. How long have you used those in 18 hunting? 19 A. I probably have not used them in 20 the last ten years. But I used them from 21 the time of their acquisition or purchase up 22 until that point. So that would be -- 23 Q. About 12 years. 24 A. Yeah. 25 Q. Did you use them regularly?</p>
<p style="text-align: right;">58</p> <p>1 about the content, is that anywhere in this? 2 A. Page 23, the 2015 Summit Viper 3 failed to provide any additional safety 4 precautions that were feasible and 5 incorporated in the previous designs. 6 Q. You're talking about the hatch 7 cover, though? 8 A. Strike that. Wrong paragraph. 9 Q. Maybe I can short circuit this, 10 but you're certainly welcome to go through 11 as I've read this multiple times and I 12 didn't see what you said about the content 13 anywhere in here. 14 A. Specifically referencing the seat 15 label. I believe I do address in the report 16 that there is no warning against the user 17 inadvertently placing their hand or engaging 18 the QuickDraw spring. 19 Q. I didn't see that in there either. 20 So I just -- I don't see it in your report 21 so let's go on. Is there anything else 22 that's not in your report that you need to 23 add? 24 A. Not that I'm aware of. 25 Q. Now, let's go back for a second</p>	<p style="text-align: right;">60</p> <p>1 A. They would be used multiple times 2 during the hunting season. 3 Q. Were they your go-to climbing 4 stand? 5 A. As far as a climbing stand went 6 they would be interchanged with the 7 Treewalker that's discussed in my report. 8 But a fixed position stand is often my go-to 9 selection. 10 Q. That's why I asked about climbing 11 stands. Were they mainly, those two and the 12 Treewalker stand were your go-to climbing 13 stands; is that right? 14 A. Those are the only climbing stands 15 that I possess. 16 Q. And you used them about a dozen 17 years; is that right? 18 A. Correct. 19 Q. At any point in time did you have 20 any problems with those stands? 21 A. None that I recall. 22 Q. Any point in time did the cable 23 come out on those stands at all? 24 A. I did not ever have a cable 25 detach. It should be noted that those did</p>

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16 (61 to 64)

<p style="text-align: right;">61</p> <p>1 include the safety covers that allowed me to</p> <p>2 verify that the cable was properly</p> <p>3 positioned within the cable bracket.</p> <p>4 Q. And did those stands have the</p> <p>5 warning label in the same location?</p> <p>6 A. They do have the warning label</p> <p>7 sewn into the seat, correct.</p> <p>8 Q. So you know that the warning</p> <p>9 labels have been used in that area for</p> <p>10 Summit Treestands since -- at least 22</p> <p>11 years?</p> <p>12 A. That sounds correct.</p> <p>13 Q. Now, I don't know that you have</p> <p>14 any expert opinion about treestand safety.</p> <p>15 I didn't see any. Do you have any?</p> <p>16 A. Do I have any expert opinions</p> <p>17 regarding treestand safety?</p> <p>18 Q. Yes.</p> <p>19 A. None that I'm offering, no.</p> <p>20 Q. You're not offering any opinions</p> <p>21 about materials, in other words, different</p> <p>22 materials should have been used by Summit?</p> <p>23 A. Materials in the sense of the raw</p> <p>24 material, no, I'm not offering that</p> <p>25 different raw materials should have been</p>	<p style="text-align: right;">63</p> <p>1 harness or Mr. -- or the tree -- sorry.</p> <p>2 Q. The actual harness that came with</p> <p>3 this stand.</p> <p>4 A. I have not seen a harness that</p> <p>5 came with this specific -- Mr. Vandine's</p> <p>6 subject treestand.</p> <p>7 Q. Have you seen any harness owned by</p> <p>8 Mr. Vandine?</p> <p>9 A. I don't believe a harness was</p> <p>10 provided at the time of the inspection.</p> <p>11 Q. When you first received your</p> <p>12 Summit Viper in 2002 it came with a harness,</p> <p>13 right?</p> <p>14 A. It likely did.</p> <p>15 Q. And did you use that harness?</p> <p>16 A. I have never used a harness that</p> <p>17 was provided by the treestand manufacturer.</p> <p>18 I've always purchased aftermarket harnesses.</p> <p>19 Q. I notice that one of the ones that</p> <p>20 you purchased was Hunter Safety Systems, is</p> <p>21 it X-1; is that right?</p> <p>22 A. That's correct.</p> <p>23 Q. What did you use before that?</p> <p>24 A. I've had several variations or</p> <p>25 versions of the Hunter Safety Systems X-1.</p>
<p style="text-align: right;">62</p> <p>1 used. I do offer suggestions of alternate</p> <p>2 designs that would include different</p> <p>3 materials or more material, but as far as</p> <p>4 the raw material goes or components</p> <p>5 selected.</p> <p>6 Q. I'm talking about there is a whole</p> <p>7 component of engineering called material</p> <p>8 engineering and part of what they do is</p> <p>9 discuss the selection of the materials, in</p> <p>10 other words, if it's stainless steel or</p> <p>11 aluminum or steel or what grade of steel, et</p> <p>12 cetera.</p> <p>13 A. Correct.</p> <p>14 Q. You don't have any opinions with</p> <p>15 regard to the type of materials used in this</p> <p>16 product?</p> <p>17 A. I do not.</p> <p>18 Q. I noticed that there is no</p> <p>19 discussion whatsoever in your report about</p> <p>20 the Summit safety harness that came in the</p> <p>21 stand; is that true?</p> <p>22 A. I do not discuss that in my</p> <p>23 report, no.</p> <p>24 Q. Have you ever seen it?</p> <p>25 A. Have I ever seen a provided Summit</p>	<p style="text-align: right;">64</p> <p>1 And those have been my primary harness, I</p> <p>2 believe, over the last 10, 15 years.</p> <p>3 Q. Do those come in a package that</p> <p>4 had a DVD in it?</p> <p>5 A. I believe so.</p> <p>6 Q. Written instructions and warnings,</p> <p>7 right?</p> <p>8 A. I believe so.</p> <p>9 Q. Those came with instructions and</p> <p>10 warnings that were also sewn into the</p> <p>11 labels, right?</p> <p>12 A. There are warnings and</p> <p>13 instructions and expiration dates sewn into</p> <p>14 some of the labels, yes.</p> <p>15 Q. You didn't have any problem</p> <p>16 reading those or looking at those, right?</p> <p>17 A. With the specific ones I have</p> <p>18 received, no. I have seen wear and</p> <p>19 degradation over those labels over time, and</p> <p>20 then subsequently frustration as a consumer</p> <p>21 of products, in an attempt to stay with the</p> <p>22 expiration dates provided on the harnesses.</p> <p>23 I would purchase a harness and its</p> <p>24 manufacturing date would already be two or</p> <p>25 three years in the past, and could be a</p>

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17 (65 to 68)

<p style="text-align: right;">65</p> <p>1 frustration to the consumer as multiple</p> <p>2 years have already been removed from the</p> <p>3 serviceable life of that harness.</p> <p>4 Q. Certainly you know you could call</p> <p>5 Hunter Safety System, provide them with your</p> <p>6 date of purchase, and they would extend that</p> <p>7 out for you?</p> <p>8 A. I'm not aware of that.</p> <p>9 Q. You didn't try that on any of your</p> <p>10 Hunter Safety System harness?</p> <p>11 A. No.</p> <p>12 Q. On the Summit Treestands you</p> <p>13 purchased, they also came with written</p> <p>14 instructions and warnings, did they not?</p> <p>15 MR. DARIA: Objection to the</p> <p>16 form.</p> <p>17 THE WITNESS: I would --</p> <p>18 MR. SUTTON: Let me rephrase</p> <p>19 that.</p> <p>20 BY MR. SUTTON:</p> <p>21 Q. The Summit Treestands that you</p> <p>22 owned did they also come with instructions</p> <p>23 and warnings?</p> <p>24 MR. DARIA: Same objection.</p> <p>25 Barry, not to interrupt, I think his</p>	<p style="text-align: right;">67</p> <p>1 product, right?</p> <p>2 A. It's been a long time ago, I don't</p> <p>3 know if I recall exactly which product video</p> <p>4 I watched.</p> <p>5 Q. Okay. And did you watch the video</p> <p>6 that was co-packaged with this stand?</p> <p>7 A. With Mr. Vandine's stand?</p> <p>8 Q. Yes.</p> <p>9 A. That DVD was not provided to me to</p> <p>10 watch.</p> <p>11 Q. Okay. Are you aware of whether or</p> <p>12 not it includes both the National Bow Hunter</p> <p>13 Education Foundation video and Summit video</p> <p>14 showing how to use the product?</p> <p>15 A. I am not aware one way or the</p> <p>16 other.</p> <p>17 Q. You have no opinions based upon</p> <p>18 your report by review of any violation of</p> <p>19 any express warranty, true?</p> <p>20 A. Would you mind defining express</p> <p>21 warranty.</p> <p>22 Q. You know what an express warranty</p> <p>23 is, don't you?</p> <p>24 A. I understand what a warranty is,</p> <p>25 but I'm not sure if I understand express</p>
<p style="text-align: right;">66</p> <p>1 testimony was he tested it. I don't</p> <p>2 believe he purchased it.</p> <p>3 MR. SUTTON: We're going to get</p> <p>4 into that in a second.</p> <p>5 MR. DARIA: That's my objection.</p> <p>6 THE WITNESS: So, the treestands</p> <p>7 were received as a gift and already</p> <p>8 unpacked from the original packaging and I</p> <p>9 don't recall what the contents of the</p> <p>10 original packaging was at the time.</p> <p>11 I will offer that it is likely</p> <p>12 that they included warnings and</p> <p>13 instructions, but I do not recall whether</p> <p>14 those specific treestands included those.</p> <p>15 BY MR. SUTTON:</p> <p>16 Q. Would you have read them before</p> <p>17 you used the product?</p> <p>18 A. I don't know if I would have read</p> <p>19 the entirety of the warnings. I do recall</p> <p>20 watching a DVD at the time. And if I</p> <p>21 remember correctly, that DVD content has not</p> <p>22 changed much over the subsequent years.</p> <p>23 Q. At the time in 2002, Summit was</p> <p>24 providing a DVD which was basically just</p> <p>25 Summit itself showing you how to use its</p>	<p style="text-align: right;">68</p> <p>1 warranty.</p> <p>2 Q. Express warranty is a warranty</p> <p>3 given to somebody in writing, that says hey,</p> <p>4 we're going to warrant this for a period,</p> <p>5 one, two, five years or whatever. You have</p> <p>6 no opinions whatever, I didn't see addressed</p> <p>7 anywhere, about any violation of any express</p> <p>8 warranty?</p> <p>9 A. I have no opinions regarding the</p> <p>10 warranty in that report.</p> <p>11 Q. What about implied warranty?</p> <p>12 A. I believe my opinions may relate</p> <p>13 to implied warranty. Mr. Vandine believed</p> <p>14 and relied upon his stand to be safe and</p> <p>15 followed what he believed were the</p> <p>16 appropriate measures to inspect and ensure</p> <p>17 that the cable assembly was properly secured</p> <p>18 and the design inherently allowed him to be</p> <p>19 misled and position the cable stop in a</p> <p>20 manner that may not fully support his</p> <p>21 climbing of the treestand.</p> <p>22 Then additionally, the warnings</p> <p>23 and the design of the treestand had the</p> <p>24 ability for a climber to grasp and engage</p> <p>25 and disengage which Summit refers to as a</p>

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18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 safety locking device.</p> <p>2 Q. Anything else?</p> <p>3 A. Not regarding that.</p> <p>4 MR. SUTTON: This is a great</p> <p>5 time for a quick break, if you don't mind.</p> <p>6 - - -</p> <p>7 (Recess.)</p> <p>8 - - -</p> <p>9 MR. SUTTON: All right. We're</p> <p>10 back on the record.</p> <p>11 - - -</p> <p>12 EXAMINATION (Cont'd)</p> <p>13 - - -</p> <p>14 BY MR. SUTTON:</p> <p>15 Q. Let's delve a little bit into your</p> <p>16 background here. It appears that you -- you</p> <p>17 prepared a C.V.; is that right?</p> <p>18 A. Correct.</p> <p>19 Q. And you listed in your</p> <p>20 professional competency as manufacturing --</p> <p>21 or, oh, I'm sorry, as a mechanical engineer</p> <p>22 who investigates vehicle and tractor trailer</p> <p>23 accidents -- true?</p> <p>24 A. Correct.</p> <p>25 Q. -- vehicle systems and component</p>	<p style="text-align: right;">71</p> <p>1 A. I do not specifically list hunting</p> <p>2 products, correct.</p> <p>3 Q. In addition, you list some product</p> <p>4 design -- product design engineering with</p> <p>5 certain expertise and you also don't list</p> <p>6 any hunting products, true?</p> <p>7 A. That's correct.</p> <p>8 Q. It appears from my review of your</p> <p>9 C.V. that you've worked at Wolf Technologies</p> <p>10 since about 2018; is that right?</p> <p>11 A. Wolf Technical Services, yes,</p> <p>12 2018.</p> <p>13 Q. I keep call it technologies, I</p> <p>14 apologize. Okay?</p> <p>15 A. Wolf is fine.</p> <p>16 Q. And this is the first treestand</p> <p>17 case in which you've testified as an expert;</p> <p>18 is that right?</p> <p>19 A. That is correct.</p> <p>20 Q. Now, I know you've reviewed or</p> <p>21 co-signed other reports for Wolf Technical</p> <p>22 Services, right?</p> <p>23 A. That is correct.</p> <p>24 Q. Do you know how many?</p> <p>25 A. I do not have a specific number.</p>
<p style="text-align: right;">70</p> <p>1 failures -- true?</p> <p>2 A. Correct.</p> <p>3 Q. -- industrial workplace</p> <p>4 accident -- true?</p> <p>5 A. Correct.</p> <p>6 Q. -- agricultural vehicle and</p> <p>7 implemented accidents -- true?</p> <p>8 A. Yes.</p> <p>9 Q. -- and generically product defect</p> <p>10 and failures -- true?</p> <p>11 A. Correct.</p> <p>12 Q. You don't list any type of hunting</p> <p>13 products in there, do you?</p> <p>14 A. I do not specifically list hunting</p> <p>15 products, however hunting products like</p> <p>16 other products can be investigated in</p> <p>17 similar manners, and the same manners and</p> <p>18 techniques that I would use in an automobile</p> <p>19 reconstruction or in an auto investigation</p> <p>20 applied to the investigation and analysis of</p> <p>21 multiple products including treestands.</p> <p>22 Q. I'm just reading from your C.V.,</p> <p>23 and it's a very easy question. You don't</p> <p>24 list any hunting products as being a</p> <p>25 professional competency, true?</p>	<p style="text-align: right;">72</p> <p>1 I believe it's likely in the neighborhood of</p> <p>2 three to six.</p> <p>3 Q. Well, I asked you to bring those</p> <p>4 reports with you, and I got a -- an</p> <p>5 objection based upon not being limited to</p> <p>6 the time. Is that something that you could</p> <p>7 look up?</p> <p>8 A. I cannot currently look that up.</p> <p>9 As we sit here, I don't have access to that</p> <p>10 information.</p> <p>11 Q. I'm not saying that you have to do</p> <p>12 it right here as we sit here today, I'm</p> <p>13 asking if you could go back to Wolf and look</p> <p>14 it up?</p> <p>15 A. I could likely determine how many</p> <p>16 reports I've technically reviewed or</p> <p>17 assisted in the testing for.</p> <p>18 Q. I know, for instance, of several,</p> <p>19 so, I know that there with us a Lucien Lee</p> <p>20 case; do you recall that?</p> <p>21 A. I do not recall the matter name.</p> <p>22 If you tell me a -- a product and a</p> <p>23 complaint I might be able to remember.</p> <p>24 Q. Millennium Outdoors?</p> <p>25 A. It's still not ringing a bell.</p>

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19 (73 to 76)

73	<p>1 Q. There was a -- there was three</p> <p>2 cases against Alliance Outdoor products for</p> <p>3 Walker, Clayton, and Edwards. Do you</p> <p>4 remember those?</p> <p>5 A. I do recall those.</p> <p>6 Q. Any other ones that you can</p> <p>7 recall?</p> <p>8 A. There is an ongoing case that we</p> <p>9 just received, however, I do not know the</p> <p>10 status of any filing. It's strictly a</p> <p>11 consulting analysis at this point.</p> <p>12 Q. Do you know what the manufacturer</p> <p>13 is?</p> <p>14 A. I don't know if I'm allowed to</p> <p>15 discuss that. I would have to discuss that</p> <p>16 with the client that retained us first.</p> <p>17 Q. Is it Summit?</p> <p>18 A. It is not Summit.</p> <p>19 Q. It looks like previous to working</p> <p>20 at Wolf Technologies you worked at a company</p> <p>21 called Ring-Co, LLC; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And this was the design of an</p> <p>24 off-road on-road terminal tract system?</p> <p>25 A. There was -- there were a couple</p>	75	<p>1 A. Chad and Trisha Ringer were the</p> <p>2 other individuals.</p> <p>3 Q. Prior to that, it looks like, or</p> <p>4 maybe at the same time it looks like you</p> <p>5 also worked at Smart Guided Systems in</p> <p>6 Columbus, Indiana?</p> <p>7 A. Yes, there is overlap in the --</p> <p>8 Smart Guided Systems was the application and</p> <p>9 integration of GPS guidance to turf care</p> <p>10 products. Essentially auto steer for low</p> <p>11 tech lawnmowers.</p> <p>12 Q. Neither Ring-Co nor Smart Guidance</p> <p>13 Systems had anything to do with the hunting</p> <p>14 field, true?</p> <p>15 A. That is correct.</p> <p>16 Q. Prior to that it looks like out of</p> <p>17 school you worked for a company called</p> <p>18 Equipment Technologies, Inc?</p> <p>19 A. That's correct.</p> <p>20 Q. What did you do there?</p> <p>21 A. Designed mobile agricultural field</p> <p>22 sprayers. I was responsible for designs of</p> <p>23 suspension systems, cab integration, user</p> <p>24 interfaces regarding warning applications,</p> <p>25 instruction manuals under the gamut of</p>
74	<p>1 of designs that I worked on through my time</p> <p>2 with Ring-Co. One was the licensing of</p> <p>3 manufacture of an on-road off-road terminal</p> <p>4 tractor, terminal truck. It's the -- kind</p> <p>5 of described it as the half cab semi used to</p> <p>6 move trailers around warehouses. Also while</p> <p>7 at my time at Ring-Co developed and built,</p> <p>8 prototype, a mobile utility tract chair.</p> <p>9 Q. What was your reason for leaving</p> <p>10 Ring-Co?</p> <p>11 A. I did assist in cofounding that</p> <p>12 company, and the cofounders and I as a group</p> <p>13 were going different directions, and I chose</p> <p>14 to walk away.</p> <p>15 Q. Did you have an ownership</p> <p>16 interest?</p> <p>17 A. I did.</p> <p>18 Q. Did you tender that back?</p> <p>19 A. I walked away from it.</p> <p>20 Q. Were you terminated?</p> <p>21 A. I was not.</p> <p>22 Q. Were you asked to leave?</p> <p>23 A. I was not.</p> <p>24 Q. Who were the other individuals</p> <p>25 involved in Ring-Co?</p>	76	<p>1 engineering for a mobile off-road product.</p> <p>2 Q. Again, nothing to do with hunting,</p> <p>3 right?</p> <p>4 A. Nothing to do with hunting.</p> <p>5 Q. Have you ever been involved in</p> <p>6 design of a hunting product?</p> <p>7 A. No, I have not.</p> <p>8 Q. Have you ever been involved in the</p> <p>9 design of a treestand product of any type?</p> <p>10 A. I have not.</p> <p>11 Q. Have you ever worked for or a</p> <p>12 treestand manufacturer?</p> <p>13 A. I have not.</p> <p>14 Q. Have you ever worked for a</p> <p>15 treestand testing firm?</p> <p>16 A. (No audible response.)</p> <p>17 Q. By that I mean a firm that</p> <p>18 specialized in testing treestands under ATSM</p> <p>19 standards.</p> <p>20 A. I have not.</p> <p>21 Q. I saw the look on your face</p> <p>22 because I'm sure Wolf Technologies -- I keep</p> <p>23 saying Technologies, Technical Company has</p> <p>24 tested treestands before, right?</p> <p>25 A. That's correct.</p>

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20 (77 to 80)

<p style="text-align: right;">77</p> <p>1 Q. And, in fact, in some of these</p> <p>2 other cases -- and you said you assisted on</p> <p>3 the testing, you actually did physical, you</p> <p>4 know, load tests and other types of tests,</p> <p>5 et cetera in those cases, right?</p> <p>6 A. That's correct.</p> <p>7 Q. And in those cases, those other</p> <p>8 cases that you assisted on, they were</p> <p>9 involving something in which a -- the</p> <p>10 product actually broke in some way, right?</p> <p>11 A. Yes. There was a broken component</p> <p>12 that led to a fall or an incident that</p> <p>13 allowed the treestand to disengage from the</p> <p>14 tree.</p> <p>15 Q. And that differs in this point</p> <p>16 where you're just saying that the design</p> <p>17 should have changed because nothing failed</p> <p>18 on this particular stand, right?</p> <p>19 A. That's correct. There is no</p> <p>20 evidence of a broken component. And the</p> <p>21 opinions I offer are primarily design based</p> <p>22 opinions, and design selection that should</p> <p>23 be considered by designers of products,</p> <p>24 regardless of whether it's a treestand or a</p> <p>25 mobile piece of off-road equipment.</p>	<p style="text-align: right;">79</p> <p>1 lot older than that.</p> <p>2 A. That's correct.</p> <p>3 Q. How long do you leave -- are these</p> <p>4 all fixed position stands?</p> <p>5 A. They are fixed position stands.</p> <p>6 Q. And how long do you leave them in</p> <p>7 the tree?</p> <p>8 A. Typically the duration of the</p> <p>9 season.</p> <p>10 Q. Do you take them down at the end</p> <p>11 of the season?</p> <p>12 A. Yes.</p> <p>13 Q. Are any stands still up in the</p> <p>14 trees now?</p> <p>15 A. There are several stands that are</p> <p>16 still up in the tree that were installed</p> <p>17 late in the season.</p> <p>18 Q. The season is over in Indiana, is</p> <p>19 it not?</p> <p>20 A. That's correct.</p> <p>21 Q. What is the longest time you've</p> <p>22 kept a fixed position treestand in a tree?</p> <p>23 A. I do not have a specific number.</p> <p>24 Q. Did you purchase all of these</p> <p>25 treestands new?</p>
<p style="text-align: right;">78</p> <p>1 Q. You said you were a hunter, right?</p> <p>2 A. That's correct.</p> <p>3 Q. Bow hunter or rifle or both?</p> <p>4 A. I try to stick to archery as much</p> <p>5 as I can, but I hunt the available season.</p> <p>6 Q. You usually hunt from elevation?</p> <p>7 A. During archery season, yes.</p> <p>8 Q. When was the last time you hunted</p> <p>9 from elevation?</p> <p>10 A. January 6th or 7th. Near the</p> <p>11 last -- end of our late archery season in</p> <p>12 Indiana.</p> <p>13 Q. What treestands do you own?</p> <p>14 A. I do not have an inventoried list</p> <p>15 of our fixed position -- or my fixed</p> <p>16 position treestands. I do know a lot of</p> <p>17 them are Gorilla treestands. And there is</p> <p>18 one -- I apologize, I'm trying to remember</p> <p>19 what labels look like. There is a Hawk</p> <p>20 fixed position treestand, and a Big Game</p> <p>21 fixed position treestand.</p> <p>22 Q. Were these all purchased in the</p> <p>23 last ten years?</p> <p>24 A. Some of them were.</p> <p>25 Q. Your Gorilla stands are probably a</p>	<p style="text-align: right;">80</p> <p>1 A. There is a combination of</p> <p>2 acquired, whether it be gifts handed down or</p> <p>3 whether they be purchased treestands, but</p> <p>4 they were all new when we -- I'm saying my</p> <p>5 family acquired them, yes.</p> <p>6 Q. In all of the new ones that you</p> <p>7 acquired, did they all come with harnesses?</p> <p>8 A. To my knowledge, yes.</p> <p>9 Q. Because they are fixed position</p> <p>10 stands they also came with lineman's</p> <p>11 climbing belt, true?</p> <p>12 A. Lineman's climbing belt, is that</p> <p>13 what you're referring to?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 Q. And they also likely all came with</p> <p>17 DVDs, true?</p> <p>18 A. Likely did.</p> <p>19 Q. And they also came with written</p> <p>20 instructions and warnings, right?</p> <p>21 A. Yes.</p> <p>22 Q. And those detailed the safety use</p> <p>23 of the stands and the safety use of</p> <p>24 harnesses, right?</p> <p>25 A. I would assume they did.</p>

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MSJ_JA000205

Transcript of Jarrett Waters
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21 (81 to 84)

81	<p>1 Q. Now, Gorilla Treestands had some</p> <p>2 warning labels that were sewn into some of</p> <p>3 its equipment; are you aware of that?</p> <p>4 A. I do not recall.</p> <p>5 Q. For instance, all of its warning</p> <p>6 labels that were on a tree strap, any type</p> <p>7 of tree strap or attachment strap to the</p> <p>8 tree would have been sewn into that; are you</p> <p>9 aware of that?</p> <p>10 A. That sounds consistent with what</p> <p>11 I've seen.</p> <p>12 Q. Okay. Now, when was the last time</p> <p>13 of you used a Summit treestand?</p> <p>14 A. Probably well over ten years, the</p> <p>15 last time when one of the climbing</p> <p>16 treestands was utilized.</p> <p>17 Q. When did you take hunter safety?</p> <p>18 A. 2000.</p> <p>19 Q. Are you a certified hunter safety</p> <p>20 instructor?</p> <p>21 A. I am not a certified instructor.</p> <p>22 Q. Have you ever worked at all inside</p> <p>23 the treestand industry?</p> <p>24 A. Not inside the treestand industry.</p> <p>25 Q. What about the hunting or archery</p>	83	<p>1 All those things are consistent with</p> <p>2 accident reconstruction and the techniques</p> <p>3 used within that field.</p> <p>4 Q. Well, I mean, I don't want to get</p> <p>5 too into the weeds of it, but you said you</p> <p>6 were involved in some auto cases, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And in auto cases people do full</p> <p>9 accident reconstructions. They lay out the</p> <p>10 scene. They take measurements at the scene.</p> <p>11 They explain exactly how the accident</p> <p>12 happened, including the speeds of the</p> <p>13 vehicle, the directions of the vehicles,</p> <p>14 et cetera. And that's not something that</p> <p>15 you've done, that type of analysis in this</p> <p>16 case, right?</p> <p>17 MR. DARIA: Objection to the</p> <p>18 form.</p> <p>19 THE WITNESS: I have inspected</p> <p>20 the scene. I have taken measurements at</p> <p>21 the scene. I have analyzed the available</p> <p>22 materials, and I have provided two</p> <p>23 different scenarios that are most</p> <p>24 consistent with the evidence on how the</p> <p>25 climbing cable disconnected from the</p>
82	<p>1 industry?</p> <p>2 A. No, I have not.</p> <p>3 Q. Have you ever worked for a</p> <p>4 distributor or retailer of hunting products?</p> <p>5 A. I have not.</p> <p>6 Q. Same is true of treestands; is it</p> <p>7 not?</p> <p>8 A. That's correct.</p> <p>9 Q. Prior to this case, have you ever</p> <p>10 designed any components for a treestand?</p> <p>11 A. I have not.</p> <p>12 Q. Part of this case did you ever</p> <p>13 design any components for any hunting</p> <p>14 product?</p> <p>15 A. I have not.</p> <p>16 Q. Do you hold yourself out as an</p> <p>17 accident reconstructionist?</p> <p>18 A. I do.</p> <p>19 Q. Did you perform an accident</p> <p>20 reconstruction in this case?</p> <p>21 A. In this case I analyzed all of the</p> <p>22 -- and reviewed all of the provided</p> <p>23 materials, incident reports, inspected the</p> <p>24 available evidence, performed testing and</p> <p>25 performed an analysis on those components.</p>	84	<p>1 treestand resulting in Mr. Vandine's fall.</p> <p>2 BY MR. DARIA:</p> <p>3 Q. Let's talk a little bit about that</p> <p>4 for a second. First, back to my question</p> <p>5 was: You have not, other than what's in</p> <p>6 your report, or generally what you just</p> <p>7 testified to, you did not prepare a formal</p> <p>8 accident reconstruction as would be prepared</p> <p>9 in like an auto case, right?</p> <p>10 A. In the sense of two vehicles</p> <p>11 coming together, and initial and exit</p> <p>12 velocities, no, there is not an accident</p> <p>13 reconstruction in that sense.</p> <p>14 Q. And is the evidence that you've</p> <p>15 reviewed contained in the file materials</p> <p>16 that were provided to me?</p> <p>17 A. Yes.</p> <p>18 Q. As well as your own physical view</p> <p>19 and inspections of this product?</p> <p>20 A. Yes.</p> <p>21 Q. Some of which are represented in</p> <p>22 your photographs that you took, right?</p> <p>23 A. Yes.</p> <p>24 Q. You also went to the scene, right?</p> <p>25 A. That's correct.</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

22 (85 to 88)

85	<p>1 Q. Did you review the video portion</p> <p>2 of Mr. Vandine's dep?</p> <p>3 A. I did not.</p> <p>4 Q. Did you see it referenced in the</p> <p>5 deposition that it was being videoed?</p> <p>6 A. I believe the initial front page</p> <p>7 of the transcript said something about a</p> <p>8 video deposition, but I was only provided</p> <p>9 and only reviewed the written transcript.</p> <p>10 Q. Did you ask for a copy of the</p> <p>11 video transcript?</p> <p>12 A. I did not.</p> <p>13 Q. You could tell by reading through</p> <p>14 that transcript that there were portions in</p> <p>15 which he was showing the camera how he was</p> <p>16 operating in the treestand, right?</p> <p>17 A. That would be consistent with some</p> <p>18 of the parenthal [ph] indicating comments</p> <p>19 within the transcript, yes.</p> <p>20 Q. You made some comments about</p> <p>21 inadvertent touching or contact with the</p> <p>22 QuickDraw trigger, right?</p> <p>23 A. That's correct.</p> <p>24 Q. Do you recall one way or the other</p> <p>25 whether he said or showed where he would</p>	87	<p>1 Q. Because if he's showing the</p> <p>2 location of the stand, where his hand is not</p> <p>3 touching the trigger, that rules out one of</p> <p>4 your theories, right?</p> <p>5 A. At that time that he's</p> <p>6 demonstrating where his hand was, yes, it</p> <p>7 would be difficult -- if it is not</p> <p>8 contacting the QuickDraw spring it would be</p> <p>9 difficult for him to inadvertently disengage</p> <p>10 that.</p> <p>11 I think it is important to note</p> <p>12 that while Mr. Vandine's specific case</p> <p>13 conclude a disconnection of the cable there</p> <p>14 are two theories that are presented. One</p> <p>15 is -- one is consistent with the material</p> <p>16 deformation that we see on the endboard face</p> <p>17 of the keyway and that's that the cable was</p> <p>18 partially inserted or installed into the</p> <p>19 cable bracket.</p> <p>20 The second is that the -- in a</p> <p>21 relative sense of the design of Summit</p> <p>22 Treestands that the -- and including Summit</p> <p>23 marketing materials and instructions,</p> <p>24 include hunters inadvertently or</p> <p>25 intentionally grasping the QuickDraw</p>
86	<p>1 hold the stand or was holding it right</p> <p>2 before the accident?</p> <p>3 A. I recall how he stated how he</p> <p>4 would climb. He would climb a little</p> <p>5 different than a hunter that might sit on</p> <p>6 the back bar while they're climbing.</p> <p>7 He described climbing with his</p> <p>8 elbows on some of the upright bar, which</p> <p>9 would place his hands more towards the</p> <p>10 general area of those QuickDraw springs, but</p> <p>11 I do not know whether -- and I don't believe</p> <p>12 he says anything regarding contact or no</p> <p>13 contact with those springs.</p> <p>14 Q. You don't recall him on the record</p> <p>15 saying, "I was holding the stand right</p> <p>16 here," and pointing to a section of the</p> <p>17 stand?</p> <p>18 A. That -- I could -- I'd have to</p> <p>19 look back exactly at the transcript, but</p> <p>20 that sounds consistent with what he said.</p> <p>21 Q. And that would be something that</p> <p>22 was important for somebody that's trying to</p> <p>23 determine the cause of this event, true?</p> <p>24 A. It would be a component of it,</p> <p>25 yes.</p>	88	<p>1 springs, which may or may not disengage or</p> <p>2 further engage those QuickDraw springs.</p> <p>3 Q. Those are your two hypothesis of</p> <p>4 what potentially could happen, right?</p> <p>5 A. Regarding the cable disconnecting</p> <p>6 from the stand, yes.</p> <p>7 Q. But in this case as you say the</p> <p>8 physical evidence is consistent with him</p> <p>9 having it partially inserted at the time of</p> <p>10 the incident, right?</p> <p>11 A. That's correct.</p> <p>12 Q. So the physical evidence support a</p> <p>13 conclusion that he had partially reinserted</p> <p>14 it when he moved it above a limb, true?</p> <p>15 A. The physical evidence shows that</p> <p>16 the -- is consistent with the cable being</p> <p>17 partially inserted into the keyway.</p> <p>18 Q. Now, in addition to the physical</p> <p>19 evidence being consistent with that, do you</p> <p>20 recall in his deposition, wherein he says,</p> <p>21 "I moved it above the limb"?</p> <p>22 A. "It" being?</p> <p>23 Q. Moved the upper portion of the</p> <p>24 treestand above the limb?</p> <p>25 A. Okay.</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

23 (89 to 92)

89	<p>1 Q. "I reattached it"?</p> <p>2 A. Correct.</p> <p>3 Q. And there was a bunch of</p> <p>4 discussion about reattaching it and how he</p> <p>5 did it?</p> <p>6 A. Correct.</p> <p>7 Q. And he showed it on the video,</p> <p>8 right?</p> <p>9 A. Okay.</p> <p>10 Q. When you say "okay," you're not</p> <p>11 really answering, but you're not disagreeing</p> <p>12 with me --</p> <p>13 A. I have not reviewed the video of</p> <p>14 his deposition.</p> <p>15 Q. Fair enough. So, in any event, he</p> <p>16 says in his deposition, that "After I had</p> <p>17 moved it, I did not move" -- "above it and</p> <p>18 attached the cable into the cable bracket, I</p> <p>19 did not move it again, when the accident</p> <p>20 happened," right?</p> <p>21 A. I believe his testimony is</p> <p>22 inconsistent. And there are some paragraphs</p> <p>23 above that he does make a statement that he</p> <p>24 says, "I move it," or "I will." I don't</p> <p>25 want to quote him verbatim without looking</p>	91	<p>1 could, instead of making little steps, I</p> <p>2 stretched out as far as I could, underneath</p> <p>3 my armpits and rest my weight on it to bring</p> <p>4 my feet up."</p> <p>5 "QUESTION: But you hadn't moved</p> <p>6 it?"</p> <p>7 "ANSWER: I hadn't moved it, no."</p> <p>8 A. I agree with what you're reading</p> <p>9 there. That is one of the areas that he</p> <p>10 discussed that. Previously in there, and if</p> <p>11 you'll allow me I'll find -- I can find the</p> <p>12 words in my notes. I would highlight where</p> <p>13 some of his comments make that inconsistent.</p> <p>14 Q. Okay. Well, first of all, let's</p> <p>15 talk about this.</p> <p>16 A. Okay.</p> <p>17 Q. These comments that he didn't move</p> <p>18 it at all before the stand [sic] occurred,</p> <p>19 right -- the incident occurred.</p> <p>20 A. That you just read to me, yes.</p> <p>21 Q. Okay. And so if we take him at</p> <p>22 his word in his deposition that he had moved</p> <p>23 it above the limb --</p> <p>24 A. Okay.</p> <p>25 Q. -- and was in the process of</p>
90	<p>1 at the transcript.</p> <p>2 There is a section that could be</p> <p>3 conceived that he moved the upper treestand</p> <p>4 prior to applying his whole weight to it.</p> <p>5 Q. Well, we went through that at</p> <p>6 length in his deposition. And in fact, his</p> <p>7 testimony was on page 179 of his dep:</p> <p>8 "QUESTION: Between the time that</p> <p>9 you placed the cable back into the bracket</p> <p>10 and the time the accident occurred, you had</p> <p>11 not made any significant movements to the</p> <p>12 upper portion of the stand, right?"</p> <p>13 "ANSWER: No."</p> <p>14 "QUESTION: When you put it on the</p> <p>15 stand, and when you put -- put the cable, it</p> <p>16 was in position above the limb already for</p> <p>17 you to make the next climb to the platform?"</p> <p>18 "ANSWER: Correct."</p> <p>19 "QUESTION: You didn't have to</p> <p>20 move it at all, right? You just leaned at</p> <p>21 it."</p> <p>22 "ANSWER: To start that climb?</p> <p>23 "QUESTION: Yes."</p> <p>24 "ANSWER: I was stretched --</p> <p>25 stretched out as far as I could. So that I</p>	92	<p>1 loading it so he could pick his feet up to</p> <p>2 move the platform when the accident</p> <p>3 occurred; then at that point in time the</p> <p>4 cables are actually moving further into</p> <p>5 engagement towards the tree, right?</p> <p>6 A. Should the cables have been</p> <p>7 properly inserted that movement would drive</p> <p>8 the cable stop further into the bracket.</p> <p>9 Q. And that means that your second</p> <p>10 theory that there was inadvertent actuation</p> <p>11 of the trigger along with movement of the</p> <p>12 upper portion of the stand, would somehow</p> <p>13 disengage the cable assembly would not be</p> <p>14 applicable in this case, true?</p> <p>15 A. If he does not move the stand from</p> <p>16 the position where he buckled -- "buckled,"</p> <p>17 he uses that word, installed the cable stop</p> <p>18 into bracket, the inadvertent contact with</p> <p>19 the QuickDraw spring likely does not apply</p> <p>20 to this scenario.</p> <p>21 I will say that Summit warned that</p> <p>22 any mispositioning of the QuickDraw spring</p> <p>23 is a hazard and warns that it may cause the</p> <p>24 user to fall. It includes pictures in</p> <p>25 there, in the instruction manual which</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 Mr. Vandine testified that he was -- he did</p> <p>2 not review, but it -- it provides</p> <p>3 information that says that if the QuickDraw</p> <p>4 should be out of position that the condition</p> <p>5 is dangerous and at any time it could cause</p> <p>6 the user to fall.</p> <p>7 Q. Okay. But my question is you gave</p> <p>8 two accident scenarios. One, he takes the</p> <p>9 treestand, climbs up to the tree -- climbs</p> <p>10 up the tree, gets to the limb, removes the</p> <p>11 cable from the upper portion, puts it around</p> <p>12 the tree all while holding the stand,</p> <p>13 attempts to put it back in the cable</p> <p>14 bracket. Doesn't put it fully back in the</p> <p>15 cable bracket, attempts to load it and it</p> <p>16 comes out. That's one scenario, right?</p> <p>17 A. Correct.</p> <p>18 Q. And then there is a second</p> <p>19 scenario that you gave in which he does all</p> <p>20 of that, but then is in the process of</p> <p>21 moving the upper portion of the stand in a</p> <p>22 way that he inadvertently actuates the</p> <p>23 trigger, the cable somehow becomes attached</p> <p>24 to the back of the tree and he picks up that</p> <p>25 upper portion of the stand so that the cable</p>	<p style="text-align: right;">95</p> <p>1 There is a section previously in his</p> <p>2 transcript, that he says the words "I move</p> <p>3 it," discussing the upper section of the</p> <p>4 treestand. That's where I'm getting the</p> <p>5 inconsistencies in whether he did or did not</p> <p>6 move it.</p> <p>7 Q. Okay. But that's not my question.</p> <p>8 So if you listen to my question --</p> <p>9 A. Please repeat your question then.</p> <p>10 Q. He's in the process of moving the</p> <p>11 upper portion above the tree -- above the</p> <p>12 limb, right?</p> <p>13 A. I believe he describes it, he just</p> <p>14 moves the cable around the limb.</p> <p>15 Q. Oh. In order to move the cable</p> <p>16 around the limb you've got to kind of move</p> <p>17 the upper portion above the limb, right?</p> <p>18 A. The upper portion could be</p> <p>19 positioned at the limb, I guess.</p> <p>20 Q. So he's moved it up to that</p> <p>21 location. He says, "I don't move the</p> <p>22 platform. I don't take the platform out</p> <p>23 above the limb," right?</p> <p>24 A. Correct.</p> <p>25 Q. And when the accident occurred he</p>
<p style="text-align: right;">94</p> <p>1 moves out and then comes out, right?</p> <p>2 A. Yes, that is the second.</p> <p>3 Q. And there is nothing in the</p> <p>4 testimony that suggested he was touching the</p> <p>5 trigger assembly at the time of the</p> <p>6 accident, right?</p> <p>7 A. Based on the transcript there is</p> <p>8 nothing that discusses that.</p> <p>9 Q. And, in fact, he shows me on the</p> <p>10 record, he says, "I was holding right here,"</p> <p>11 and he points at a point that's not on the</p> <p>12 trigger assembly; are you aware of that?</p> <p>13 A. I have not reviewed that video.</p> <p>14 Q. Do you recall him testifying that</p> <p>15 his hand was right here?</p> <p>16 A. Without looking at the exact words</p> <p>17 it sounds like something he would have said.</p> <p>18 Q. Okay. Secondly, after a person</p> <p>19 has moved the treestand above a limb --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- and is as he describes I'm in</p> <p>22 the process of now bringing the platform up,</p> <p>23 there is no reason to now move the upper</p> <p>24 portion of the stand, right?</p> <p>25 A. And that's what I'm referring to.</p>	<p style="text-align: right;">96</p> <p>1 says, "I'm in the process of trying to move</p> <p>2 the platform up," right?</p> <p>3 A. When the disconnection occurs,</p> <p>4 yes.</p> <p>5 Q. Okay. And if he's in the process</p> <p>6 of moving the platform up, he's not moving</p> <p>7 the upper portion of the stand, right?</p> <p>8 A. At that time, correct.</p> <p>9 Q. So when his testimony is, "I'm in</p> <p>10 the process of moving the platform," you</p> <p>11 agree with me he's not moving the upper</p> <p>12 portion of the stand because that's how you</p> <p>13 use these, right?</p> <p>14 A. That's correct.</p> <p>15 Q. And that's how you have used these</p> <p>16 in the 12 years you've used these, right?</p> <p>17 A. That's correct.</p> <p>18 Q. So based upon that testimony, we</p> <p>19 can deduce that your second theory that</p> <p>20 there is inadvertent actuation of the</p> <p>21 trigger assembly is inconsistent with his</p> <p>22 testimony, right?</p> <p>23 MR. DARIA: Objection to the</p> <p>24 form.</p> <p>25 THE WITNESS: There is</p>

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25 (97 to 100)

97	<p>1 inconsistencies on whether he adjusted the</p> <p>2 top of the stand after he believed he</p> <p>3 buckled, or positioned the cable stop</p> <p>4 within the cable bracket.</p> <p>5 BY MR. SUTTON:</p> <p>6 Q. Well, setting aside these</p> <p>7 inconsistencies which we'll get to in a</p> <p>8 moment, his testimony was clear, that "I was</p> <p>9 in the process of beginning to move the</p> <p>10 platform when the accident occurred," right?</p> <p>11 A. Correct.</p> <p>12 Q. And that by itself, regardless of</p> <p>13 what inconsistencies you think exist, that</p> <p>14 by itself with your experience using a Viper</p> <p>15 product you know that he was not moving the</p> <p>16 upper portion of the stand, right?</p> <p>17 A. He was not moving the upper</p> <p>18 portion of the stand when the cable</p> <p>19 disconnected. If he had moved the upper</p> <p>20 portion of the stand prior to loading his</p> <p>21 weight onto the upper portion, and had</p> <p>22 inadvertently contacted the spring the cable</p> <p>23 could become mispositioned within that</p> <p>24 bracket should the cable have hung up on the</p> <p>25 back of the tree.</p>	99	<p>1 between the time you put the cable in the</p> <p>2 cable bracket and the time the accident</p> <p>3 occurred; right?"</p> <p>4 "ANSWER: I did not move the --"</p> <p>5 "QUESTION: The upper portion of</p> <p>6 the stand?"</p> <p>7 "ANSWER: No. I just -- it</p> <p>8 depends on what you're calling move. I</p> <p>9 mean, I put the cable around. I got it</p> <p>10 right where I wanted to climb. It might</p> <p>11 have been above, you know, this won't go</p> <p>12 directly between the limb, this right here,</p> <p>13 this angle."</p> <p>14 "So I had it a little bit above</p> <p>15 me. I had to put it above that to get it up</p> <p>16 there. And then I can't honestly recall</p> <p>17 moving it."</p> <p>18 "QUESTION: Maybe I'm not asking a</p> <p>19 very good question. I think we're on the</p> <p>20 same page. I think that you have to move it</p> <p>21 above the limb. Put it in that location.</p> <p>22 Then put the cable" upon. "Put the cable</p> <p>23 in, right?"</p> <p>24 "And then you test starting it,</p> <p>25 and then you put it in, you look at it and</p>
98	<p>1 Q. Is there any testing that you've</p> <p>2 done while using this stand that's been able</p> <p>3 to duplicate that, in any way?</p> <p>4 A. The testing provided in that video</p> <p>5 shows that if there is contact with the --</p> <p>6 Q. Hold on a second. Before we get</p> <p>7 to the video which we've gone over, and</p> <p>8 we'll get to more again. The video was not</p> <p>9 you standing on the stand using the stand on</p> <p>10 a tree, right?</p> <p>11 A. Correct.</p> <p>12 Q. And the cable is nailed to the</p> <p>13 back of the tree in that video, right?</p> <p>14 A. It is adhered to the back of the</p> <p>15 tree.</p> <p>16 Q. I'm asking about any testing on an</p> <p>17 actual tree in which you've been able to be</p> <p>18 duplicate that.</p> <p>19 A. I -- no.</p> <p>20 Q. While the product is in use?</p> <p>21 A. Correct.</p> <p>22 Q. So, Mr. Vandine goes on to say on</p> <p>23 page 180:</p> <p>24 "QUESTION: ... let me finish and</p> <p>25 you can sit down. You hadn't moved it</p>	100	<p>1 start testing it."</p> <p>2 "ANSWER: I tested it. Put all my</p> <p>3 weight on it. That's when it came</p> <p>4 connected."</p> <p>5 "QUESTION: In the time that you</p> <p>6 had put the cable in and tested it and the</p> <p>7 time the accident occurred you did not move</p> <p>8 the upper portion of the stand. It was</p> <p>9 already at that location. You're just</p> <p>10 moving the bottom?"</p> <p>11 "ANSWER: Bottom, right."</p> <p>12 That's clearly unequivocally</p> <p>13 testifying that he did not move the upper</p> <p>14 portion after putting it in.</p> <p>15 A. May I reference the transcript to</p> <p>16 discuss those areas?</p> <p>17 Q. My question is on that first and</p> <p>18 then we'll get to the other areas.</p> <p>19 A. What you read me, yes.</p> <p>20 Q. That's what it clearly says under</p> <p>21 oath, right?</p> <p>22 A. That portion that you read me,</p> <p>23 yes.</p> <p>24 Q. Okay. Now, you said you have some</p> <p>25 other testimony. What is your other</p>

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26 (101 to 104)

<p style="text-align: right;">101</p> <p>1 testimony?</p> <p>2 A. From his transcript, I believe</p> <p>3 page 175:</p> <p>4 The question is, "What happened</p> <p>5 next?"</p> <p>6 "ANSWER: I tested it, pushed on</p> <p>7 it so it's locked in, I'm ready to go, move</p> <p>8 it up, went to put my weight on it to bring</p> <p>9 my feet up, that's when it became</p> <p>10 unbuckled."</p> <p>11 Q. Yes. As I read that testimony in</p> <p>12 conjunction with his other testimony, he's</p> <p>13 talking I'm ready go, move it up meaning I'm</p> <p>14 going to move up the platform.</p> <p>15 A. I don't -- it's not clear whether</p> <p>16 he moves it up or he plans to move it up via</p> <p>17 that statement.</p> <p>18 Q. Okay. But later I come back,</p> <p>19 several pages later and you can get the</p> <p>20 testimony I just read in which he clearly</p> <p>21 and unequivocally says I had not moved it, I</p> <p>22 was in the process of moving the platform,</p> <p>23 right?</p> <p>24 A. Right. I agree with what you're</p> <p>25 telling me from that portion of it. This is</p>	<p style="text-align: right;">103</p> <p>1 A. He clarifies it based on the</p> <p>2 statement that you read me, yes.</p> <p>3 Q. Now, is there any other evidence,</p> <p>4 whatsoever, that you have physical or</p> <p>5 otherwise that suggests that he</p> <p>6 inadvertently actuated the trigger assembly</p> <p>7 at the time of the accident?</p> <p>8 A. There is no evidence I have that</p> <p>9 he inadvertently actuated the trigger</p> <p>10 assembly.</p> <p>11 Q. And do you have any evidence,</p> <p>12 physical or otherwise, that suggests he</p> <p>13 contacted the QuickDraw trigger assembly at</p> <p>14 all just before the accident, other than to</p> <p>15 put it around the tree.</p> <p>16 A. I don't have any evidence,</p> <p>17 physical evidence, that I have seen that he</p> <p>18 did or did not touch it.</p> <p>19 Q. Or other evidence?</p> <p>20 A. Or other evidence.</p> <p>21 Q. Do you have any physical or other</p> <p>22 evidence that you can point to that suggests</p> <p>23 that the cable somehow was caught on the</p> <p>24 backside of the tree or anywhere on the</p> <p>25 tree?</p>
<p style="text-align: right;">102</p> <p>1 why I'm saying there's inconsistencies on</p> <p>2 whether he moved it or not. And I believe</p> <p>3 he references he doesn't even recall in some</p> <p>4 of these statements.</p> <p>5 Q. Okay. Well, the statement that</p> <p>6 you read he says, "I moved it," could be</p> <p>7 read to mean he was getting ready to move</p> <p>8 the platform up, right?</p> <p>9 A. I agree it could be read that way.</p> <p>10 It also could be read that he moved up the</p> <p>11 seat portion of the stand.</p> <p>12 Q. Okay. But several pages later in</p> <p>13 the testimony that I read to you, on pages</p> <p>14 179 through 181, I clarify that. And</p> <p>15 shortly after giving that, within a minute</p> <p>16 or two after that, he clarified that he was</p> <p>17 talking about moving up the bottom, that he</p> <p>18 had not moved the top, right?</p> <p>19 A. He does in that section, yes.</p> <p>20 Q. So if you read all the testimony</p> <p>21 together in testimony that occurs within</p> <p>22 like six pages of one another on the</p> <p>23 transcript, so a few minutes in the</p> <p>24 deposition, he clarifies I was in the</p> <p>25 process of moving the platform up, right?</p>	<p style="text-align: right;">104</p> <p>1 A. No physical evidence, with this</p> <p>2 particular case; however, that is a scenario</p> <p>3 within the design that could happen, and it</p> <p>4 is foreseeable that it may happen.</p> <p>5 Q. I'm asking about evidence in this</p> <p>6 case. So you went out to the tree and you</p> <p>7 looked at the tree. Were there any pieces</p> <p>8 of bark that were displaced or anything like</p> <p>9 that that you took photographs of that can</p> <p>10 point to suggest that that possibly happened</p> <p>11 anything in this case?</p> <p>12 A. Nothing specific, no.</p> <p>13 Q. Is there any other evidence other</p> <p>14 than your theory that this is a hypothetical</p> <p>15 possibility that suggests it happened in</p> <p>16 this case?</p> <p>17 A. No other physical evidence.</p> <p>18 Q. Okay. Did you do any testing</p> <p>19 while you were out there to determine</p> <p>20 whether or not the bark was of the type that</p> <p>21 could put enough load to push the cable</p> <p>22 backwards, regardless of whether the trigger</p> <p>23 assembly was pulled?</p> <p>24 A. I did not.</p> <p>25 Q. And you're a hunter so you know</p>

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Conducted on February 7, 2024

27 (105 to 108)

105	<p>1 that trees have different type of barks.</p> <p>2 Some of them have loose bark that will just</p> <p>3 peel off rather than -- at -- a small amount</p> <p>4 of force, right?</p> <p>5 A. Trees have different barks. Some</p> <p>6 bark is more resilient than others and some</p> <p>7 bark provides more of a snagging hazard than</p> <p>8 other types of bark.</p> <p>9 Q. There wasn't a nail or anything</p> <p>10 else in the back of the tree that suggested</p> <p>11 the cable was nailed to the back of the</p> <p>12 tree, right?</p> <p>13 A. I did not witness a nail in the</p> <p>14 back of the tree.</p> <p>15 Q. And there is nothing about his</p> <p>16 testimony that suggested that he had</p> <p>17 physically attached that cable to the tree</p> <p>18 itself, other than to put it around the tree</p> <p>19 to move above the limb, right?</p> <p>20 A. That's correct.</p> <p>21 Q. Was there any physical or other</p> <p>22 evidence that suggested, as for instance you</p> <p>23 show in your -- that video that you sent</p> <p>24 last night, that he changed his grip in the</p> <p>25 middle of the fall event, or in the middle</p>	107	<p>1 tree.</p> <p>2 Q. Both the physical evidence and the</p> <p>3 testimony would support that possibility as</p> <p>4 being the cause, right?</p> <p>5 A. Yes, they would support that</p> <p>6 possibility.</p> <p>7 Q. On the other hand, you have this</p> <p>8 hypothetical that this cable can just come</p> <p>9 out, of which you have no evidence to</p> <p>10 support in this instance that occurring?</p> <p>11 MR. DARIA: Objection to the</p> <p>12 form.</p> <p>13 THE WITNESS: Given</p> <p>14 Mr. Vandine's inconsistencies in his</p> <p>15 deposition there was evidence to support</p> <p>16 that he may have moved the stand which</p> <p>17 would be a key component of that</p> <p>18 actuation. Without reviewing the video</p> <p>19 that you're referencing and where his hand</p> <p>20 is "right here," I do not know, whether or</p> <p>21 not that hand is in the position of the</p> <p>22 QuickDraw spring, or entangled in the</p> <p>23 QuickDraw spring.</p> <p>24 BY MR. SUTTON:</p> <p>25 Q. We went through the aspects of the</p>
106	<p>1 of the accident scenario? You know what I</p> <p>2 mean by that? Your video you show that you</p> <p>3 have to in order to get it to come out, you</p> <p>4 have to change your grip and then push the</p> <p>5 spring so you push the cable out, right?</p> <p>6 A. That's correct.</p> <p>7 Q. Is there any evidence whatsoever</p> <p>8 physical or otherwise that you have, that</p> <p>9 suggests that that happened in this case?</p> <p>10 A. There is no physical evidence that</p> <p>11 describes that inadvertent contact with the</p> <p>12 QuickDraw spring or the reengagement of the</p> <p>13 QuickDraw spring.</p> <p>14 Q. Okay. So now we've gone over your</p> <p>15 two hypotheticals of what could occur. You</p> <p>16 have one that you say is consistent with the</p> <p>17 physical evidence and is also consistent</p> <p>18 with his testimony, which is he goes up to</p> <p>19 the tree -- goes up the tree to the branch,</p> <p>20 moves it around, doesn't put it all the way</p> <p>21 back in, and then falls as a result, right?</p> <p>22 A. The evidence is consistent with</p> <p>23 the cable not being fully installed into the</p> <p>24 bracket, and that being the root cause of</p> <p>25 the disconnection of the stand from the</p>	108	<p>1 second scenario that were needed, the cable</p> <p>2 has to be caught somehow in the tree, right?</p> <p>3 A. Or the cable can be of such a</p> <p>4 shape that it no longer has any outward</p> <p>5 force or flex back to wanting to return to</p> <p>6 its natural shape. If the legs of the U are</p> <p>7 parallel, the cable may have a tendency to</p> <p>8 slide axially without having any additional</p> <p>9 snagging or force on the back of the cable.</p> <p>10 Q. Okay. So first of all, you looked</p> <p>11 at the cable in this case and that's not the</p> <p>12 case in this cable, right?</p> <p>13 A. This cable is more U-shaped than</p> <p>14 the other cables I have reviewed.</p> <p>15 Q. But it still has an outward</p> <p>16 component outside the diameter would be on</p> <p>17 this particular stand and this tree?</p> <p>18 A. The photographs represented in</p> <p>19 Figure 10 of my report show the cable in its</p> <p>20 resting position on the table and the legs</p> <p>21 while not perfectly parallel are very</p> <p>22 parallel in a U-shape as compared to the</p> <p>23 cables photographed for Figure 29, on page</p> <p>24 31 of my report.</p> <p>25 Q. First of all, that wasn't my</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

28 (109 to 112)

109	<p>1 question. My question is, this is still --</p> <p>2 the diameter of this is still outside the</p> <p>3 diameter of the two cable brackets. In</p> <p>4 other words, it's still got to have some</p> <p>5 type of outward component, right?</p> <p>6 A. There is no measure of the leg</p> <p>7 width, I guess.</p> <p>8 Q. You didn't measure it at all?</p> <p>9 A. I could scale this photo and</p> <p>10 determine that, from --</p> <p>11 Q. That's not my question. My</p> <p>12 question is did you measure it?</p> <p>13 A. I did not measure that specific</p> <p>14 distance on -- as these cables sat on the</p> <p>15 table.</p> <p>16 Q. One of the things that you just</p> <p>17 said to me is that one of the possibilities</p> <p>18 is that cable is exactly aligned in such a</p> <p>19 way that it has no outward component on it,</p> <p>20 right? That's one of the things you just</p> <p>21 said to me, right?</p> <p>22 A. As the cable takes a more parallel</p> <p>23 shape that outward component is reduced.</p> <p>24 Q. Okay. But there is the still</p> <p>25 force in gravity, right?</p>	111	<p>1 Q. Did you do any testing to support</p> <p>2 that. You just threw this out. Did you do</p> <p>3 any testing to support this hypothesis?</p> <p>4 A. That if a cable takes a more</p> <p>5 parallel shape that it has reduced</p> <p>6 resistance against the cable bracket?</p> <p>7 Q. That potentially -- that is a</p> <p>8 possibility in this case?</p> <p>9 A. The shape of the cable was</p> <p>10 analyzed and -- as observed during the</p> <p>11 inspections, and has a more parallel shape</p> <p>12 than new and other previously used cables --</p> <p>13 Q. It's a simple question. Did you</p> <p>14 do any testing to determine that hypothesis</p> <p>15 you just threw out as you sit here today?</p> <p>16 A. The testing I did showed that a</p> <p>17 climbing cable used on a narrow diameter</p> <p>18 tree has a tendency to take that shape more</p> <p>19 so than a cable that is never loaded or that</p> <p>20 a cable that is used on larger diameter</p> <p>21 tree. That was the extent of that testing.</p> <p>22 Q. Okay. So the subject cable you</p> <p>23 didn't measure to determine whether this is</p> <p>24 outward competent; you didn't measure the</p> <p>25 distance between the two cable brackets to</p>
110	<p>1 A. Sure.</p> <p>2 Q. There's still friction resulting</p> <p>3 from -- this particular cable has a polymer</p> <p>4 coating on it, right?</p> <p>5 A. There may be some friction</p> <p>6 interaction within the keyhole slot if the</p> <p>7 legs are parallel, yes.</p> <p>8 Q. And you still have nothing acting</p> <p>9 on the back of the tree so if you tilted</p> <p>10 that treestand, it would still, as you</p> <p>11 talked about earlier, the cable would move</p> <p>12 out into space, right?</p> <p>13 A. Depending how you tilt the stand.</p> <p>14 If you tilt the stand upward gravity is</p> <p>15 going to want to drive those cables rearward</p> <p>16 into the tree.</p> <p>17 Q. But there is a tree in between it,</p> <p>18 right?</p> <p>19 A. Yes, but you can still get some</p> <p>20 upward component to the cable.</p> <p>21 Q. There's also a branch that he's</p> <p>22 just put it over the top which prevents you</p> <p>23 from tilting it down, right?</p> <p>24 A. He describes the cables above the</p> <p>25 branch at the time of the incident.</p>	112	<p>1 determine if that was possible; and you</p> <p>2 didn't test whether this was possible on a</p> <p>3 tree during use, right?</p> <p>4 A. Sure.</p> <p>5 Q. Okay. Now, go back to my</p> <p>6 question. In the one hypothesis you throw</p> <p>7 out you say there's physical evidence that</p> <p>8 supports it and the testimony supports it,</p> <p>9 right?</p> <p>10 A. Correct.</p> <p>11 Q. We went through the other</p> <p>12 components of what has to happen for it to</p> <p>13 come back, including inadvertent actuation</p> <p>14 in two different directions on the cable, on</p> <p>15 the QuickDraw spring, and you have no</p> <p>16 evidence to support that happened, right?</p> <p>17 A. In this particular case, no.</p> <p>18 Q. And as an engineer and in applying</p> <p>19 good engineering principles, when we're</p> <p>20 confronted with a hypothesis of what could</p> <p>21 possibly happen, theoretically, and physical</p> <p>22 evidence showing that another hypothesis is</p> <p>23 more likely to occur, the scientific method</p> <p>24 suggests that the one that the physical</p> <p>25 evidence matches is the one that applied,</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

29 (113 to 116)

<p style="text-align: right;">113</p> <p>1 right?</p> <p>2 A. I present them as two different</p> <p>3 scenarios on how the cable may disconnect</p> <p>4 from the cable bracket.</p> <p>5 Q. And I get that you are saying that</p> <p>6 there is two different hypothetical</p> <p>7 scenarios of what may happen, but you agree</p> <p>8 with me that based upon your engineering</p> <p>9 analysis in this case, that the one that</p> <p>10 likely occurred is that he just didn't place</p> <p>11 it back in the bracket correctly, right?</p> <p>12 A. Based on my analysis, review of</p> <p>13 all the evidence, that -- the scenario of</p> <p>14 him -- the scenario of the climbing cable</p> <p>15 not being fully positioned within the</p> <p>16 climbing bracket is the most likely</p> <p>17 scenario.</p> <p>18 Q. Okay. So if you were going to</p> <p>19 testify to a reasonable degree of</p> <p>20 engineering certainty as to what caused this</p> <p>21 event, you would agree with me that in your</p> <p>22 opinion the most likely scenario is that he</p> <p>23 climbed to height, encountered a limb, tried</p> <p>24 to move that upper portion of the treestand</p> <p>25 above the limb, and in doing so failed to</p>	<p style="text-align: right;">115</p> <p>1 Q. And you agree that based upon your</p> <p>2 review of all of the evidence that you've</p> <p>3 seen thus far, that the most likely</p> <p>4 occurrence was that he did not, when he went</p> <p>5 above the tree, put the cable properly back</p> <p>6 in the cable bracket and that's what caused</p> <p>7 this accident, right?</p> <p>8 A. What caused the accident is the</p> <p>9 cable not being fully positioned within the</p> <p>10 cable bracket.</p> <p>11 Q. That's not my question nor is it</p> <p>12 close to my question. And you know what the</p> <p>13 question is and perhaps you don't want to</p> <p>14 give the answer.</p> <p>15 A. Could you repeat the request then.</p> <p>16 Q. Sure. My question is: Based upon</p> <p>17 a reasonable degree of engineering</p> <p>18 certainty, after you reviewed the evidence</p> <p>19 and the testimony and the physical evidence</p> <p>20 itself, the evidence supports a conclusion</p> <p>21 that the likely cause of the accident is</p> <p>22 that Mr. Vandine, when he moved the upper</p> <p>23 portion of the treestand above the limb</p> <p>24 failed to put the cable assembly properly</p> <p>25 back in the cable bracket, true?</p>
<p style="text-align: right;">114</p> <p>1 put the cable properly in the cable bracket,</p> <p>2 true?</p> <p>3 A. The root cause of the incident is</p> <p>4 the cable disconnecting from the cable</p> <p>5 bracket. That can happen whether he's at</p> <p>6 the ground or that can happen at the top of</p> <p>7 the tree with whatever actions that he does.</p> <p>8 Should that cable not be -- that cable stop</p> <p>9 not be fully positioned within the cable</p> <p>10 bracket there is a likelihood that it will</p> <p>11 disconnect.</p> <p>12 Q. Okay. That's not my question,</p> <p>13 though. My question is -- this is my</p> <p>14 opportunity to take your deposition, and you</p> <p>15 understand that when you're signing this and</p> <p>16 you're giving a report in Federal court</p> <p>17 you're supposed to be giving testimony to a</p> <p>18 reasonable degree of engineering certainty,</p> <p>19 right?</p> <p>20 A. That's correct.</p> <p>21 Q. And a reasonable degree of</p> <p>22 engineering certainty looks at the physical</p> <p>23 evidence and the other evidence to reach a</p> <p>24 conclusion, right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">116</p> <p>1 A. Based on the evidence reviewed,</p> <p>2 yes.</p> <p>3 He believed he reattached the</p> <p>4 cable, inappropriately, and he believe he</p> <p>5 tested it to verify that it was reconnected.</p> <p>6 And then when he applied his full weight to</p> <p>7 it, it became disconnected which is</p> <p>8 consistent with it being partially inserted</p> <p>9 into the cable bracket.</p> <p>10 Q. Okay. And just to nip it in the</p> <p>11 bud, you agree with me to a reasonable</p> <p>12 degree of engineering certainty, it is your</p> <p>13 opinion that the most likely cause of this,</p> <p>14 was that the plaintiff, Mr. Vandine, failed</p> <p>15 to properly place that cable in the cable</p> <p>16 bracket when he moved it above the tree?</p> <p>17 MR. DARIA: Objection to the</p> <p>18 form.</p> <p>19 BY MR. SUTTON:</p> <p>20 Q. True?</p> <p>21 A. He failed to fully position the</p> <p>22 cable stop within the cable bracket, which</p> <p>23 in my opinion and outlined in this report is</p> <p>24 a foreseeable misuse of this product and</p> <p>25 should have been designed out through design</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

30 (117 to 120)

<p style="text-align: right;">117</p> <p>1 feature.</p> <p>2 Q. And we'll talk about that, but the</p> <p>3 answer to my question is that that is your</p> <p>4 opinion of the likely cause of this</p> <p>5 accident, right?</p> <p>6 A. Of the two scenarios that I</p> <p>7 present how a cable could disconnect that is</p> <p>8 most likely based on this physical evidence.</p> <p>9 Q. Okay. And just to tie a bow on</p> <p>10 that, you cannot point me to any physical or</p> <p>11 other evidence that affirmatively states</p> <p>12 that your second theory, which is that he</p> <p>13 manipulated the trigger assembly and the</p> <p>14 cable got caught behind the tree and he</p> <p>15 moved the upper portion of the treestand to</p> <p>16 allow it come up, you cannot point to any</p> <p>17 physical or other evidence to support that</p> <p>18 that actually happened, true?</p> <p>19 A. While that is a viable way for the</p> <p>20 cable to become dislodged from the cable</p> <p>21 bracket, the cable being partially inserted</p> <p>22 into the cable bracket is more consistent</p> <p>23 with the physical evidence presented in this</p> <p>24 case.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">119</p> <p>1 tree?</p> <p>2 A. The testing I conducted was done</p> <p>3 on a surrogate tree, essentially a utility</p> <p>4 pole of approximately nine inches in</p> <p>5 diameter.</p> <p>6 Q. And that was probably an inartful</p> <p>7 question so let me ask it again. I'm asking</p> <p>8 whether you actually went out and put it on</p> <p>9 either a pole or a tree, got in it to</p> <p>10 properly use it because when you use it</p> <p>11 you're supposed to be in it, right?</p> <p>12 A. Correct.</p> <p>13 Q. And do any testing about</p> <p>14 performance or did the cable come out or</p> <p>15 anything like that?</p> <p>16 A. The testing I conducted reviewed</p> <p>17 the ability of the cable to rest on the</p> <p>18 keyway slot and its ability to come out in</p> <p>19 subsequent movement.</p> <p>20 Q. That's that short video I received</p> <p>21 last night?</p> <p>22 A. No. That's the photographs taken</p> <p>23 in this report that show the cable in a</p> <p>24 partially inserted position.</p> <p>25 Q. Did you ever actually -- let's</p>
<p style="text-align: right;">118</p> <p>1 Now, let me just ask you a few</p> <p>2 questions about what you did or didn't do.</p> <p>3 Did you do any type of a ASTM performance</p> <p>4 testing on this product?</p> <p>5 A. I did not.</p> <p>6 Q. Do you have any reason, as you sit</p> <p>7 here today, to disagree that the product met</p> <p>8 all of the performance criteria of the ASTM</p> <p>9 standards?</p> <p>10 A. I have no reason not to believe</p> <p>11 that it met the performance criteria set</p> <p>12 forth in the ASTM standards.</p> <p>13 Q. Do you have any reason to believe</p> <p>14 that the harness that was provided with this</p> <p>15 product didn't meet any of the performance</p> <p>16 criteria of the ASTM standards?</p> <p>17 A. I was not able to evaluate the</p> <p>18 harness that may or may not have been</p> <p>19 provided with this product.</p> <p>20 Q. So you have no opinion that it did</p> <p>21 not meet ASTM standards, right?</p> <p>22 A. That would be correct.</p> <p>23 Q. Now, did you perform any testing</p> <p>24 of this model product while it was in the</p> <p>25 tree? In other words, did you use it in a</p>	<p style="text-align: right;">120</p> <p>1 talk about that a second. Did you ever</p> <p>2 actually put it in a partially inserted</p> <p>3 position and try to climb with it?</p> <p>4 A. Yes.</p> <p>5 Q. And did you video that?</p> <p>6 A. I would have to review my file to</p> <p>7 know if I videoed that or not.</p> <p>8 Q. I didn't see any videos in your</p> <p>9 file. The only video I received was the one</p> <p>10 I received last night.</p> <p>11 What happened when you started</p> <p>12 climbing with it in that perched position?</p> <p>13 A. Within one or two upward movements</p> <p>14 and dis, not disconnection, but removal</p> <p>15 of the -- or actuations of the climbing</p> <p>16 treestand releasing the cable from the back</p> <p>17 of the tree, the cable dislodged from the</p> <p>18 perched position on the cable bracket.</p> <p>19 Q. In other words, your testing</p> <p>20 showed that you would not be able to climb</p> <p>21 in that because it's not stable position?</p> <p>22 A. Not for a prolonged period of</p> <p>23 time. It would be very shortly after it was</p> <p>24 positioned there that it would disconnect,</p> <p>25 it would become disconnected from the stand.</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

31 (121 to 124)

<p style="text-align: right;">121</p> <p>1 Q. And that's because the movement of</p> <p>2 the stand itself will either knock it into</p> <p>3 or out of the channel of the cable bracket?</p> <p>4 A. Depending on its level of</p> <p>5 engagement with that keyway slot, simply</p> <p>6 applying weight to the stand may cause it to</p> <p>7 dislodge.</p> <p>8 Q. When it dislodged in that testing,</p> <p>9 did it go into engagement, did it go into</p> <p>10 the cable bracket?</p> <p>11 A. No, it exited the top of the cable</p> <p>12 bracket.</p> <p>13 Q. Were you wearing a harness at the</p> <p>14 time?</p> <p>15 A. I was not wearing a harness at the</p> <p>16 time.</p> <p>17 Q. Were you standing on the ground?</p> <p>18 A. I was standing six foot 12 inches</p> <p>19 off the ground.</p> <p>20 Q. Were you standing on the platform?</p> <p>21 A. I was.</p> <p>22 Q. And did you -- this testing, you</p> <p>23 said you had some photographs of it. I</p> <p>24 don't recall seeing any of these</p> <p>25 photographs. Do you know where they are in</p>	<p style="text-align: right;">123</p> <p>1 A. You would know relatively quickly.</p> <p>2 Whether it's the first application or the</p> <p>3 fifth I don't know. You would likely not be</p> <p>4 able to climb to full height with it in the</p> <p>5 partially seated position.</p> <p>6 Q. Did you do any load or stress</p> <p>7 calculations?</p> <p>8 A. I did not.</p> <p>9 Q. Now, you tested the load capacity</p> <p>10 of the cables in other cases. You did not</p> <p>11 do that in this case, did you?</p> <p>12 A. I did not.</p> <p>13 Q. Do you recall the strength of them</p> <p>14 from other cases that you tested?</p> <p>15 A. I don't remember the specific</p> <p>16 numbers.</p> <p>17 Q. Did you review any other treestand</p> <p>18 manufacturer's written warnings or</p> <p>19 instructions for the purposes of this file?</p> <p>20 A. I don't believe I did.</p> <p>21 Q. The only other one I saw in here</p> <p>22 was the Millennium Multi-Vision product.</p> <p>23 What was the purpose of adding that?</p> <p>24 A. Are you referencing -- is it a</p> <p>25 photograph or is there a manual?</p>
<p style="text-align: right;">122</p> <p>1 your file?</p> <p>2 A. The photographs in my report were</p> <p>3 a direct result of that testing and</p> <p>4 positioning.</p> <p>5 Q. I'm sorry, I was asking about in</p> <p>6 the file, not in the report. What pages are</p> <p>7 you talking about on your report?</p> <p>8 A. On page 34, page 35, showing a</p> <p>9 partially seated cable within the keyway</p> <p>10 slot where loading the stand or subsequent</p> <p>11 movement of the stand may result in that</p> <p>12 cable to dislodge.</p> <p>13 Q. So you were not actually climbing</p> <p>14 up a tree on it, you were just moving the</p> <p>15 bracket up and down; is that right?</p> <p>16 A. I was just moving the top section.</p> <p>17 Q. Up and down?</p> <p>18 A. Yes.</p> <p>19 Q. So if anybody had actually placed</p> <p>20 it in that location, that was something they</p> <p>21 would not -- you would agree with me would</p> <p>22 not be able to climb to height? They would</p> <p>23 know fairly quickly when they moved that</p> <p>24 upper portion that it was not fully seated,</p> <p>25 true?</p>	<p style="text-align: right;">124</p> <p>1 Q. It looks like in research. It</p> <p>2 doesn't look like it's a manual. I think</p> <p>3 it's -- it may be web page.</p> <p>4 A. It is. The incorporation of the</p> <p>5 Multi-Vision was a -- was an alternative</p> <p>6 design to a cable attachment to a climbing</p> <p>7 treestand. And it is a design that prevents</p> <p>8 the scenario of a partially seated cable</p> <p>9 providing a false positive or a feeling to</p> <p>10 the user that the cable may be secure.</p> <p>11 That design incorporates a series</p> <p>12 of holes along the climbing cable that slide</p> <p>13 into a tube, and that climbing cable is</p> <p>14 secured via a pin such that there is no way</p> <p>15 to partially secure that in a way that will</p> <p>16 hold load. The pin's either installed or</p> <p>17 not installed. If the pin is not installed</p> <p>18 the climbing cable will retract or exit the</p> <p>19 tube preventing the user for having a false</p> <p>20 positive or a sense of securement.</p> <p>21 Q. Okay. Going to your testimony</p> <p>22 list, you list two cases. The first was a</p> <p>23 man named Vore.</p> <p>24 A. Correct.</p> <p>25 Q. What's that case about?</p>

Transcript of Jarrett Waters
Conducted on February 7, 2024

32 (125 to 128)

125	<p>1 A. It was a single-vehicle</p> <p>2 collision -- a single vehicle accident where</p> <p>3 the individual was claiming they were run</p> <p>4 off the road. And I was asked to inspect a</p> <p>5 vehicle to determine if there was any</p> <p>6 evidence or contact with a -- any evidence</p> <p>7 consistent with the contact of another</p> <p>8 vehicle.</p> <p>9 Q. And then the second case which was</p> <p>10 both deposition and trial appears to be this</p> <p>11 Gonzalez case?</p> <p>12 A. That's correct.</p> <p>13 Q. What is that case about?</p> <p>14 A. It was a two-vehicle collision in</p> <p>15 an intersection. I was asked to review GPS</p> <p>16 data and light timing sequence to determine</p> <p>17 essentially the motions or timing of a</p> <p>18 vehicle entering the intersection.</p> <p>19 Q. Okay. Do you keep a list of all</p> <p>20 cases that you have been consulted on?</p> <p>21 A. I do not keep a list.</p> <p>22 MR. SUTTON: We've been going</p> <p>23 for, I guess, about an hour. If you want</p> <p>24 to take a real quick break that would be</p> <p>25 good.</p>	127	<p>1 direction, yes.</p> <p>2 Q. And it potentially could also keep</p> <p>3 them out of the view of the game that may</p> <p>4 not look up into the trees to see if there</p> <p>5 is something up there, right?</p> <p>6 A. Yes.</p> <p>7 Q. One of the things it does is to</p> <p>8 give an archer like yourself the ability to</p> <p>9 typically have a better shot at an animal as</p> <p>10 well, right?</p> <p>11 A. Yes.</p> <p>12 Q. Now, you mentioned Gorilla and</p> <p>13 Millennium and Treewalker and Summit as</p> <p>14 treestand manufacturers -- and Big Game. Do</p> <p>15 you know of any others?</p> <p>16 A. There are a list of others. And</p> <p>17 some are private labels for certain</p> <p>18 retailers.</p> <p>19 Q. Do you know that Treewalker is no</p> <p>20 longer in business?</p> <p>21 A. I do.</p> <p>22 Q. Do you know that Gorilla is no</p> <p>23 longer in business?</p> <p>24 A. I do.</p> <p>25 Q. When was the last time you</p>
126	<p>1 - - -</p> <p>2 (Recess.)</p> <p>3 - - -</p> <p>4 BY MR. SUTTON:</p> <p>5 Q. Mr. Waters, let's just talk</p> <p>6 briefly about the purpose and use of a</p> <p>7 climbing treestand. Would you agree with me</p> <p>8 that a climbing treestand is a device that's</p> <p>9 used to get higher or closer to the game?</p> <p>10 A. It is a device that allows one to</p> <p>11 gain an elevated position. And the purpose</p> <p>12 of a climbing treestand that is often</p> <p>13 typical for hunting.</p> <p>14 Q. Well, climbing treestands are</p> <p>15 pretty much designed to be used for hunting,</p> <p>16 are they not?</p> <p>17 A. I believe they are.</p> <p>18 Q. And mainly for hunting</p> <p>19 White-tailed deer, right?</p> <p>20 A. That seems to be a very common</p> <p>21 application for them.</p> <p>22 Q. And you know one of the things it</p> <p>23 does is it puts the hunter's scent above the</p> <p>24 game, right?</p> <p>25 A. Depending on thermals and wind</p>	128	<p>1 replaced the cables on your Gorilla</p> <p>2 treestands?</p> <p>3 A. The cables moving -- or the cable</p> <p>4 from the -- I'll call it the vertical</p> <p>5 portion of the stand to the foot platform?</p> <p>6 Q. Yes. It is the cable that goes</p> <p>7 from the back post --</p> <p>8 A. Yes.</p> <p>9 Q. -- upon which the seat is, and it</p> <p>10 goes down at about a 45-degree angle to the</p> <p>11 front of the platform, right?</p> <p>12 A. Correct.</p> <p>13 Q. And those Gorilla treestands say</p> <p>14 that they should be replaced every one year</p> <p>15 or two years, right?</p> <p>16 A. That's correct.</p> <p>17 Q. When is the last time you replaced</p> <p>18 yours?</p> <p>19 A. They have all been replaced by</p> <p>20 chain and Grade 8 hardware.</p> <p>21 Q. So by that you mean you replaced</p> <p>22 all of the cables by modifying your stands;</p> <p>23 is that right?</p> <p>24 A. That's correct.</p> <p>25 Q. You modified them by now using a</p>

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33 (129 to 132)

<p style="text-align: right;">129</p> <p>1 chain which is like a bicycle chain?</p> <p>2 A. No, a five-sixteenth chain.</p> <p>3 Q. And then you attached it by using</p> <p>4 Grade 8 hardware, you mean Grade 8 bolts?</p> <p>5 A. True.</p> <p>6 Q. You remember in the manufacturer's</p> <p>7 instructions state that you should never</p> <p>8 modify a stand?</p> <p>9 A. I do not recall that specifically</p> <p>10 in those instructions, but I'm sure they</p> <p>11 stated it.</p> <p>12 Q. One of the reasons you're sure</p> <p>13 they stated it is because you read the ASTM</p> <p>14 standards in this case, right?</p> <p>15 A. That's correct.</p> <p>16 Q. And the ASTM standards include</p> <p>17 multiple requirements for the content of</p> <p>18 warnings and instructions, right?</p> <p>19 A. That's correct.</p> <p>20 Q. One of those is to never modify a</p> <p>21 stand, right?</p> <p>22 A. Yes.</p> <p>23 Q. In addition, you said you've</p> <p>24 watched multiple videos and the videos that</p> <p>25 are co-packaged for these stands all say</p>	<p style="text-align: right;">131</p> <p>1 Q. Now, treestands are used at</p> <p>2 height, right?</p> <p>3 A. Typically, yes.</p> <p>4 Q. This particular model is a 2015</p> <p>5 Viper SD climbing treestand; is that right?</p> <p>6 A. That's correct.</p> <p>7 Q. Who was it designed by originally?</p> <p>8 A. The original construction, as far</p> <p>9 as I'm aware, was designed and patented by</p> <p>10 Mr. Woller.</p> <p>11 Q. What is Mr. Woller's background?</p> <p>12 A. I would have to either reference</p> <p>13 my report or his deposition notes to</p> <p>14 remember his complete background. I believe</p> <p>15 it was -- no, I don't recall without</p> <p>16 referencing that.</p> <p>17 Q. Do you recall he was a mechanical</p> <p>18 engineer?</p> <p>19 A. That sounds familiar.</p> <p>20 Q. Do you recall that he had been</p> <p>21 involved in the industry for well over a</p> <p>22 decade when he designed the Viper?</p> <p>23 A. That sounds appropriate.</p> <p>24 Q. Now, when this product was sold</p> <p>25 new -- incidentally, Mr. Vandine testified</p>
<p style="text-align: right;">130</p> <p>1 that you should never modify your stand,</p> <p>2 right?</p> <p>3 A. That's correct.</p> <p>4 Q. And that is something that you did</p> <p>5 regardless of that, right?</p> <p>6 A. I looked into purchasing</p> <p>7 replacement cables from a company that no</p> <p>8 longer existed and it was difficult to</p> <p>9 acquire those cables. I took it upon myself</p> <p>10 to install chains, substantial hardware and</p> <p>11 covers on those to replace the cable.</p> <p>12 Q. Why didn't you just replace the</p> <p>13 stand with new stands?</p> <p>14 A. It gets expensive.</p> <p>15 Q. I can understand. That expensive</p> <p>16 is less than a hundred dollars, you can find</p> <p>17 them, aren't they?</p> <p>18 A. Some stands may be less than a</p> <p>19 hundred dollars, but you -- when you begin</p> <p>20 considering replacing multiple stands that</p> <p>21 is a high dollar amount that most hunters</p> <p>22 don't have the appetite for.</p> <p>23 Q. How many stands do you have?</p> <p>24 A. More than six, probably less than</p> <p>25 a dozen.</p>	<p style="text-align: right;">132</p> <p>1 that he purchased this product new in a box,</p> <p>2 right?</p> <p>3 A. Correct.</p> <p>4 Q. One of the defendants in this case</p> <p>5 is Dick's Sporting Goods, are you aware of</p> <p>6 that?</p> <p>7 A. I am aware they are listed on the</p> <p>8 complaint.</p> <p>9 Q. Do you have any specific opinions</p> <p>10 with regard to any actions by Dick's</p> <p>11 Sporting Goods?</p> <p>12 A. I do not.</p> <p>13 Q. You're aware, are you not, that</p> <p>14 Vipers are sold as complete climbing</p> <p>15 systems?</p> <p>16 A. I am aware that's what they are</p> <p>17 referred to as in the instruction manual.</p> <p>18 Q. And you're aware that as part of</p> <p>19 the complete climbing system they come with</p> <p>20 an upper portion or seat portion of the</p> <p>21 stand, right?</p> <p>22 A. Correct.</p> <p>23 Q. And they also come with a</p> <p>24 platform, right?</p> <p>25 A. Correct.</p>

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34 (133 to 136)

<p style="text-align: right;">133</p> <p>1 Q. Do you have any criticisms about</p> <p>2 the shape of the platform, or the surface</p> <p>3 area of the platform whatsoever?</p> <p>4 A. I do not.</p> <p>5 Q. Did you ever have any difficulties</p> <p>6 in use of the platform whatsoever?</p> <p>7 A. (No audible response.)</p> <p>8 Q. When you used it.</p> <p>9 A. None that I recall.</p> <p>10 Q. The platform on your Viper is that</p> <p>11 similar, if not identical, to the platform</p> <p>12 on the subject product other than the hatch</p> <p>13 cover, right?</p> <p>14 A. That's correct.</p> <p>15 Q. Now, it's also sold with full body</p> <p>16 harness?</p> <p>17 A. Okay.</p> <p>18 Q. Are you aware of that?</p> <p>19 A. Based on the instruction manual</p> <p>20 that's how it appears to come.</p> <p>21 Q. In fact, that's referenced in both</p> <p>22 the instruction manual and the warning label</p> <p>23 that's sewed into the seat, right?</p> <p>24 A. I believe so, yes.</p> <p>25 Q. The warning label that's sewed</p>	<p style="text-align: right;">135</p> <p>1 able to see the label.</p> <p>2 Q. Well, is there any other way to</p> <p>3 set up the seat other than face the tree?</p> <p>4 A. The ASTM standards discuss that</p> <p>5 label needs to be present and visible while</p> <p>6 the stand is in use. And one of the uses of</p> <p>7 the stand is for the purpose of the hunting,</p> <p>8 which is facing away from the tree.</p> <p>9 Q. Well, wait a minute --</p> <p>10 A. During the hunting there is --</p> <p>11 Q. First of all, that's not my</p> <p>12 question. My question is: Isn't the way</p> <p>13 you attach the seat to the stand require you</p> <p>14 to face this tree?</p> <p>15 A. The way you attach the seat to the</p> <p>16 stand or the seat to the tree?</p> <p>17 Q. Seat to the tree.</p> <p>18 A. Yes, you would have to face the</p> <p>19 tree to wrap the bungee cord around the</p> <p>20 tree.</p> <p>21 Q. In doing so you're up in the air</p> <p>22 after you've gotten to height, right?</p> <p>23 A. After you've gotten to height.</p> <p>24 Q. And you're in the process of using</p> <p>25 the stand at that point in time, right?</p>
<p style="text-align: right;">134</p> <p>1 into the seat is a black-and-orange label,</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. And a person can certainly read it</p> <p>5 as they face the tree, right?</p> <p>6 A. If the seat is folded in manner</p> <p>7 that presents the label to them, yes.</p> <p>8 Q. Isn't the label on the top of the</p> <p>9 seat?</p> <p>10 A. It is. However, the seat is</p> <p>11 articulated, or has joints that can be</p> <p>12 folded in a way to get it out of the way of</p> <p>13 the hunter as they climb, and resulting that</p> <p>14 label which is in the top portion of the</p> <p>15 seat could be folded under and out of the</p> <p>16 view of the hunter.</p> <p>17 Q. Yeah, but when they go to get to</p> <p>18 height they set up the seat. That's one of</p> <p>19 the first things that they do, right?</p> <p>20 A. Once they get it height, yes they</p> <p>21 would.</p> <p>22 Q. And when they do that it's</p> <p>23 presented to them, that label, right?</p> <p>24 A. Once the seat is set up and if</p> <p>25 they are still facing the tree they would be</p>	<p style="text-align: right;">136</p> <p>1 A. You are in the beginning phases of</p> <p>2 your hunting portion of the climb, yes.</p> <p>3 Q. Well, you use the stand from the</p> <p>4 point you attach it to the tree to the point</p> <p>5 you return it or take it off the tree,</p> <p>6 right?</p> <p>7 A. Yes. And during that assembly</p> <p>8 process the seat can be folded in a manner</p> <p>9 that the label is not clearly visible to the</p> <p>10 operator or the hunter.</p> <p>11 Q. But there's no argument that</p> <p>12 you're using the stand when you're climbing,</p> <p>13 right?</p> <p>14 A. You are using the stand when</p> <p>15 climbing.</p> <p>16 Q. You're using the stand when you're</p> <p>17 up at height, right?</p> <p>18 A. Correct.</p> <p>19 Q. It's holding you up in the air so</p> <p>20 you're using the stand, right?</p> <p>21 A. Correct.</p> <p>22 Q. You're using the stand when you're</p> <p>23 descending, right?</p> <p>24 A. Correct.</p> <p>25 Q. When you get up to height the</p>

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35 (137 to 140)

<p style="text-align: right;">137</p> <p>1 video which apparently you didn't watch, but</p> <p>2 the instruction manual talks how you attach</p> <p>3 the top portion of the seat using a bungee</p> <p>4 cord around the tree, right?</p> <p>5 A. Correct.</p> <p>6 Q. Doing so that label is right in</p> <p>7 your face, right?</p> <p>8 A. It would be, yes.</p> <p>9 Q. And you are using the stand to be</p> <p>10 up at height at that point in time, right?</p> <p>11 A. But the majority of the time that</p> <p>12 you're in the stand you're facing the</p> <p>13 opposite direction.</p> <p>14 Q. That's not my question. My</p> <p>15 question is very simple. My question is:</p> <p>16 You're using the stand while you're up in</p> <p>17 the tree at the point you're attaching the</p> <p>18 seat to the tree?</p> <p>19 A. Yes. You would be using the stand</p> <p>20 at that point.</p> <p>21 Q. Okay. Now, you're aware are you</p> <p>22 not that Summit was one of the first</p> <p>23 companies to include full-body harnesses in</p> <p>24 their stands?</p> <p>25 A. I don't know one way or the other,</p>	<p style="text-align: right;">139</p> <p>1 manufacturer of climbing treestands, is to</p> <p>2 attach it the tree as you begin to climb and</p> <p>3 not to remove it until you return to the</p> <p>4 ground, right?</p> <p>5 A. That is what the instructions</p> <p>6 recommend that you do. They instruct you to</p> <p>7 do that. I believe there is plenty of</p> <p>8 evidence and evidence within the treestand</p> <p>9 industry that not all hunters still apply or</p> <p>10 wear their safety harness.</p> <p>11 Q. Listen to my question carefully.</p> <p>12 The instructions all universally require you</p> <p>13 to wear a harness, and have it attached to</p> <p>14 the tree from the point you leave the ground</p> <p>15 to the point you return to the ground when</p> <p>16 using the climbing treestand in this</p> <p>17 industry?</p> <p>18 A. That's what the instructions</p> <p>19 state, yes.</p> <p>20 Q. You said they recommend, but none</p> <p>21 of the instructions whatsoever recommend the</p> <p>22 use, they mandate the use, right?</p> <p>23 A. I don't have the words right in</p> <p>24 front of me, but I'm sure the verbiage is</p> <p>25 consistent with that.</p>
<p style="text-align: right;">138</p> <p>1 but I would believe it if you told me.</p> <p>2 Q. Are you aware that the industry</p> <p>3 itself, the ASTM and TMS standards have</p> <p>4 required that a full-body harness be</p> <p>5 co-packaged with all climbing treestands</p> <p>6 since 2004?</p> <p>7 A. Yes, I believe so.</p> <p>8 Q. And you're aware that that same</p> <p>9 requirement is applied to ladder stands and</p> <p>10 fixed position stands?</p> <p>11 A. Yes.</p> <p>12 Q. And you're aware that treestands</p> <p>13 sold in the United States have all come with</p> <p>14 full-body harnesses since that point in</p> <p>15 time?</p> <p>16 A. That's my understanding, yes.</p> <p>17 Q. And universally, in the</p> <p>18 instructions and warnings in every treestand</p> <p>19 that's been sold since 2004, there is a</p> <p>20 requirement to wear and properly use your</p> <p>21 harness, right?</p> <p>22 A. That is instructed by the warnings</p> <p>23 on the stand, yes.</p> <p>24 Q. And using the harness, when using</p> <p>25 a climbing treestand, as instructed by every</p>	<p style="text-align: right;">140</p> <p>1 Q. Well, you've read the ASTM</p> <p>2 standards and the ASTM standards mandate</p> <p>3 that that warning is in every treestand</p> <p>4 manual, right?</p> <p>5 A. Yes.</p> <p>6 Q. And warning label, right?</p> <p>7 A. Yes.</p> <p>8 Q. That's the proper way to use these</p> <p>9 climbing treestands based upon the ASTM</p> <p>10 standards, right?</p> <p>11 A. That's what the standards</p> <p>12 recommend, yes.</p> <p>13 Q. It's not what the standards</p> <p>14 recommend. It's what the standards require,</p> <p>15 right?</p> <p>16 A. The standards, again, are bare</p> <p>17 minimum recommendation, that is up to the</p> <p>18 manufacturer to adhere to and then adopt per</p> <p>19 their standards or per their design effort.</p> <p>20 Q. We're not here to play word games.</p> <p>21 You can't require more than wear it at all</p> <p>22 times, right? So if that's the minimum, you</p> <p>23 can't do any more than that, right?</p> <p>24 A. Okay.</p> <p>25 Q. All right? And ASTM standards say</p>

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<p style="text-align: right;">141</p> <p>1 that a user shall remain harnessed to the</p> <p>2 tree from the point they leave the ground to</p> <p>3 the point they return, right?</p> <p>4 A. That's what they say.</p> <p>5 Q. That same language has also been</p> <p>6 mandated in all of the safety videos that</p> <p>7 have been included with treestands since</p> <p>8 2007, right?</p> <p>9 A. That's what they say, yes.</p> <p>10 Q. And every one that you've</p> <p>11 received, all the instruction manuals and</p> <p>12 warning labels and DVDs that you've received</p> <p>13 in any of the stands that you purchased,</p> <p>14 that's what the warnings, instructions and</p> <p>15 DVD said, right?</p> <p>16 A. That's correct.</p> <p>17 Q. That's also taught in all of the</p> <p>18 hunter safety courses in the United States,</p> <p>19 right?</p> <p>20 A. Correct.</p> <p>21 Q. And that is the full and total</p> <p>22 safe way to use this product, is to remain</p> <p>23 harnessed to the tree from the time you</p> <p>24 leave the ground to the time you return,</p> <p>25 right?</p>	<p style="text-align: right;">143</p> <p>1 A. Yes, I would.</p> <p>2 Q. You would tell them that they</p> <p>3 should be attached to the tree at all times</p> <p>4 when using a climbing treestand, right?</p> <p>5 A. Yes, I would.</p> <p>6 Q. And you would do that because</p> <p>7 there's an inherent danger involved in</p> <p>8 climbing treestands, right?</p> <p>9 A. There is danger any time you're in</p> <p>10 an elevated position, yes.</p> <p>11 Q. And that's true whether it's ANSI,</p> <p>12 the tree industry, OSHA, or treestands,</p> <p>13 right?</p> <p>14 A. That's correct.</p> <p>15 Q. And there is regulation in OSHA</p> <p>16 and the tree industry, of which Mr. Vandine</p> <p>17 was a part, that require the harness use any</p> <p>18 time you're above ground, right?</p> <p>19 A. I'm not familiar with the tree</p> <p>20 industry standards, but the standards we're</p> <p>21 discussing here today do require the use of</p> <p>22 a harness in their verbiage.</p> <p>23 Q. Mr. Vandine was in the tree</p> <p>24 industry, was he not?</p> <p>25 A. I believe he was. I believe he</p>
<p style="text-align: right;">142</p> <p>1 A. That is a safe way to use the</p> <p>2 treestand, yes.</p> <p>3 Q. Well, you've worked with</p> <p>4 Mr. Dickinson for a long period of time,</p> <p>5 right?</p> <p>6 A. Correct.</p> <p>7 Q. And you understand that he has</p> <p>8 testified and told me multiple times that</p> <p>9 the total safe way to use this product, a</p> <p>10 climbing treestand, is to be attached to the</p> <p>11 tree with your harness, at all times after</p> <p>12 leaving the ground, true?</p> <p>13 A. That is a safer way to use the</p> <p>14 stand, yes.</p> <p>15 Q. And that's the way that you</p> <p>16 believe is the safe way to use this product,</p> <p>17 right?</p> <p>18 A. I believe that is a safe way to</p> <p>19 use this product, yes. I believe there is</p> <p>20 evidence that suggests that people in --</p> <p>21 hunters within the industry do not always</p> <p>22 wear a harness.</p> <p>23 Q. If you were advising anybody about</p> <p>24 using this product you would say: You</p> <p>25 should use your harness at all times, right?</p>	<p style="text-align: right;">144</p> <p>1 states that in his deposition.</p> <p>2 Q. In New Jersey, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you understand, do you not,</p> <p>5 that OSHA requires mandates that any person</p> <p>6 in the tree industry that's working above</p> <p>7 ground has to be tied off to a tree with a</p> <p>8 full body harness at all times?</p> <p>9 A. Okay.</p> <p>10 Q. Do you have any reason to disagree</p> <p>11 with that?</p> <p>12 A. I do not.</p> <p>13 Q. Now, it's your testimony that</p> <p>14 based upon the safe way to use this product,</p> <p>15 you would agree with me, would you not, that</p> <p>16 Mr. Vandine should have been wearing his</p> <p>17 harness at the time of the accident?</p> <p>18 A. I would agree that he should have</p> <p>19 been wearing a harness when climbing the</p> <p>20 tree. I believe he also had a right to</p> <p>21 understand and believe that the stand was</p> <p>22 safe in its current design and that the</p> <p>23 harness was there to prevent a misstep or a</p> <p>24 slip on his behalf. And I believe he -- he</p> <p>25 viewed and he testified that he was not</p>

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37 (145 to 148)

<p style="text-align: right;">145</p> <p>1 aware that he was required to wear a</p> <p>2 harness. And I believe in his deposition he</p> <p>3 expressed concerns regarding harness use.</p> <p>4 Q. I'm asking you as an engineer</p> <p>5 coming into a court of law, do you agree</p> <p>6 with me that based upon all of the</p> <p>7 instructions, the industry standards, the</p> <p>8 hunter safety requirement and your own</p> <p>9 personal use that Mr. Vandine should have</p> <p>10 been wearing and using a harness at the time</p> <p>11 accident. You agree with that, right?</p> <p>12 A. I agree he should have been</p> <p>13 wearing a harness.</p> <p>14 Q. Okay. Now, you've given some</p> <p>15 indication relating to the instructions and</p> <p>16 the -- that we just discussed earlier,</p> <p>17 right?</p> <p>18 A. I believe so.</p> <p>19 Q. Do you remember that Mr. Vandine</p> <p>20 testified that his custom and practice was</p> <p>21 sadly mostly never reading the warnings.</p> <p>22 A. I believe he stated he did not</p> <p>23 read the warnings for this treestand.</p> <p>24 Q. When I asked him if it was custom</p> <p>25 and practice to do so, he said, "Sadly,</p>	<p style="text-align: right;">147</p> <p>1 Q. Well, I asked him in his</p> <p>2 deposition whether he ever read it and he</p> <p>3 said, "No." Do you recall that?</p> <p>4 A. I can look it up again, but if</p> <p>5 it's in his transcript, then I'm sure he</p> <p>6 testified to that.</p> <p>7 Q. Did you see when you inspected the</p> <p>8 stand that he had physically removed that</p> <p>9 warning label from the stand?</p> <p>10 A. The warning label was not attached</p> <p>11 to the stand at the time of the inspection.</p> <p>12 Q. And did you look to see that it</p> <p>13 had been cut off?</p> <p>14 A. The -- the remnant of the tag</p> <p>15 appeared to be a very -- a clean cut, yes.</p> <p>16 Q. Okay. So in order to cut a tag</p> <p>17 off you have to hold it in your hands,</p> <p>18 right?</p> <p>19 A. Sure.</p> <p>20 Q. And so you have the opportunity to</p> <p>21 read the warning label that you're cutting</p> <p>22 off, right?</p> <p>23 A. You would have the opportunity to.</p> <p>24 It doesn't imply that he did.</p> <p>25 Q. Okay. Maybe he made the choice.</p>
<p style="text-align: right;">146</p> <p>1 sometimes," that he just would not read</p> <p>2 them?</p> <p>3 A. Regarding other products?</p> <p>4 Q. Warnings, the warnings of</p> <p>5 treestands.</p> <p>6 A. I believe he expressed that he</p> <p>7 thought through his experience and prior use</p> <p>8 that he felt comfortable enough with them</p> <p>9 that he did not need to read the included</p> <p>10 instructions.</p> <p>11 Q. Well, I asked him on page 82, "Is</p> <p>12 it your course and practice to never read</p> <p>13 instruction manuals?"</p> <p>14 And he said, "Sadly, sometimes."</p> <p>15 Do you recall that?</p> <p>16 A. I could look it up but I trust</p> <p>17 you.</p> <p>18 Q. And he never read the instruction</p> <p>19 manual on the Summit stand, right?</p> <p>20 A. That's my understanding.</p> <p>21 Q. And he never read the warning</p> <p>22 label on the Summit treestand, right?</p> <p>23 A. I don't know if he ever read it.</p> <p>24 I know the warning label was not on the</p> <p>25 stand at the time of the inspection.</p>	<p style="text-align: right;">148</p> <p>1 I think he said intentionally to not read</p> <p>2 the warning label. My question is he had</p> <p>3 the opportunity to read it when he</p> <p>4 intentionally cut it off, right?</p> <p>5 A. Based on what he represents is his</p> <p>6 experience, he felt that he did not require</p> <p>7 that warning label to be on the stand.</p> <p>8 Q. I asked you about reading the</p> <p>9 warning label.</p> <p>10 A. He had the opportunity to read it,</p> <p>11 yes.</p> <p>12 Q. And he chose not to, right?</p> <p>13 A. He testified that he did not, is</p> <p>14 what you just read me.</p> <p>15 Q. Well, if he cut the label off, and</p> <p>16 you agree with me that it appears to be cut</p> <p>17 off, then he had the opportunity and yet he</p> <p>18 didn't read it. And that's a choice,</p> <p>19 because you're cutting something off of the</p> <p>20 stand, right?</p> <p>21 A. I would agree that's a choice to</p> <p>22 cut something off something, yes.</p> <p>23 Q. And if you're cutting off a</p> <p>24 warning label that has written words on it,</p> <p>25 you're making a choice I'm getting rid of</p>

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Transcript of Jarrett Waters
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38 (149 to 152)

<p style="text-align: right;">149</p> <p>1 this without reading it, right?</p> <p>2 A. He's making the choice to remove</p> <p>3 the label, yes.</p> <p>4 Q. And it's obvious that it's a label</p> <p>5 and it's got warnings on it, right?</p> <p>6 A. It appears to say the word</p> <p>7 "warning," and includes instructions</p> <p>8 regarding some of treestand's use, yes.</p> <p>9 Q. So you would agree with me that</p> <p>10 he's making the intentional decision not to</p> <p>11 read the warning label at that time, right?</p> <p>12 A. I struggle with the word</p> <p>13 intentionality for his decision not to read</p> <p>14 the warning at that time. He chose to cut</p> <p>15 the label off. It doesn't imply whether he</p> <p>16 read, did not read, chose not to read. He</p> <p>17 just states that he removed the label.</p> <p>18 Q. Now, in your report, Exhibit 3,</p> <p>19 you've given opinions relating to warning</p> <p>20 labels, some of which we touched on. You</p> <p>21 would agree with me since he never read the</p> <p>22 warning labels where the label was placed</p> <p>23 doesn't matter?</p> <p>24 A. I don't think that's true. If it</p> <p>25 was a label adhered somewhere on the stand</p>	<p style="text-align: right;">151</p> <p>1 THE WITNESS: Warning labels</p> <p>2 could have provided more instruction</p> <p>3 regarding the insertion and installation</p> <p>4 of a cable stop into the cable bracket.</p> <p>5 Those were not present at the time of the</p> <p>6 incident.</p> <p>7 The instructions are often</p> <p>8 provided at the point of use where they're</p> <p>9 the most unique to the design and most</p> <p>10 pertinent to the user. As you stated,</p> <p>11 Mr. Vandine may or may not choose to read</p> <p>12 those, but it was not available there to</p> <p>13 be read.</p> <p>14 BY MR. SUTTON:</p> <p>15 Q. Well, it was available until he</p> <p>16 removed it, right?</p> <p>17 A. The seat label was available to be</p> <p>18 read before he removed it.</p> <p>19 Q. Have you reviewed the exemplar of</p> <p>20 what was on that label?</p> <p>21 A. I believe I have.</p> <p>22 Q. Do you have problems with the</p> <p>23 content of that specific label?</p> <p>24 A. The content of that specific label</p> <p>25 doesn't address disconnecting the cable at</p>
<p style="text-align: right;">150</p> <p>1 he may have chose not to remove it.</p> <p>2 Q. Yeah, but when I asked him at his</p> <p>3 deposition, "Did you read the warning labels</p> <p>4 on, for instance your Field and Stream</p> <p>5 products," he said, "No, I didn't read</p> <p>6 them."</p> <p>7 A. Okay.</p> <p>8 Q. So if he chooses not to read them</p> <p>9 regardless of where it's attached is not</p> <p>10 relevant to this accident, right?</p> <p>11 A. Please restate that.</p> <p>12 Q. Yeah. If he's made the choice or</p> <p>13 just doesn't read the warning labels for</p> <p>14 whatever reason, then the placement of the</p> <p>15 warning labels doesn't matter?</p> <p>16 A. In the past tense, yes. I mean</p> <p>17 there is no reason he couldn't choose to</p> <p>18 read the warning labels in the future should</p> <p>19 he have questions regarding the stand.</p> <p>20 Q. You already told me his Field and</p> <p>21 Stream products he never read the warning</p> <p>22 labels, he intentionally removed the warning</p> <p>23 label from the Summit stand, so it has</p> <p>24 nothing to do with this accident, right?</p> <p>25 MR. DARIA: Objection to form.</p>	<p style="text-align: right;">152</p> <p>1 height. It doesn't address or provide</p> <p>2 instructions regarding the proper insertion</p> <p>3 of the cable into the cable bracket, would</p> <p>4 be my two primary concerns with that.</p> <p>5 Q. Actually what it says, it says</p> <p>6 that you have to read and follow all of the</p> <p>7 instructions and review them. And in the</p> <p>8 instruction manual it specifically says how</p> <p>9 to properly install this onto the tree,</p> <p>10 right?</p> <p>11 A. In the instruction manual, yes.</p> <p>12 Q. Let me ask you this: You would</p> <p>13 agree with me regardless of design or the</p> <p>14 method of attachment, it's up to the user to</p> <p>15 correctly attach a treestand to a tree?</p> <p>16 A. The user is the individual that</p> <p>17 attaches the treestand to the tree. It's up</p> <p>18 to the designer of the product to make it as</p> <p>19 easily useable as possible as well as</p> <p>20 include and evaluate any type of foreseeable</p> <p>21 misuse that the operator may have while or</p> <p>22 during the installation.</p> <p>23 Q. But regardless of that, throwing</p> <p>24 aside the design element, the user has to</p> <p>25 properly attach it to the tree for it to</p>

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Transcript of Jarrett Waters
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39 (153 to 156)

<p style="text-align: right;">153</p> <p>1 function properly, right?</p> <p>2 A. The user is required to attach the</p> <p>3 stand to the tree, yes.</p> <p>4 Q. And that's true regardless of the</p> <p>5 design, right?</p> <p>6 A. In order to go up the tree, the</p> <p>7 user would have to wrap the climbing cable</p> <p>8 around the tree and reinstall it to the</p> <p>9 stand, yes.</p> <p>10 Q. The user has to properly install</p> <p>11 it in the first place, to get it on the</p> <p>12 tree? That's a required thing for the user,</p> <p>13 right?</p> <p>14 A. This design allows the user to</p> <p>15 install the cable in a way that may not be</p> <p>16 considered proper according to the</p> <p>17 instructions but still support weight. So</p> <p>18 it could provide temporary use of the</p> <p>19 product with a cable that's not positioned</p> <p>20 properly.</p> <p>21 Q. That's not my question. My</p> <p>22 question is: The manufacturer is not out</p> <p>23 there in the woods. The person that's</p> <p>24 installing the treestand has to install it</p> <p>25 properly, right?</p>	<p style="text-align: right;">155</p> <p>1 Q. In fact, he had been -- he had</p> <p>2 been injured in a fall event from a tree</p> <p>3 previously, right?</p> <p>4 A. Yes, he testified to that.</p> <p>5 Q. And products of any type, whether</p> <p>6 the products are hunting products or other</p> <p>7 type of products come with written</p> <p>8 instructions, right?</p> <p>9 A. Yes, they do.</p> <p>10 Q. And the place to describe how to</p> <p>11 properly use the product is contained in the</p> <p>12 instruction manual, right?</p> <p>13 A. In full detail they are typically</p> <p>14 included in the instructions. However, if</p> <p>15 the product has some unique feature or use</p> <p>16 within the stand itself, or any product for</p> <p>17 that matter the product often includes</p> <p>18 specific instructions for the use of that</p> <p>19 feature on the device.</p> <p>20 Q. Now, do you know of any treestand</p> <p>21 manufacturer that explained exactly how to</p> <p>22 install a product on a tree in a warning</p> <p>23 label?</p> <p>24 A. The newer warning labels do</p> <p>25 contain a QR code which is a direct link to</p>
<p style="text-align: right;">154</p> <p>1 A. Yes.</p> <p>2 Q. And the place to look for how you</p> <p>3 properly install something is in the</p> <p>4 instruction manual, right?</p> <p>5 A. Mr. Vandine testified that based</p> <p>6 on his experience and use of the stand he</p> <p>7 didn't feel that the -- he felt that he</p> <p>8 fully understood how to use the stand</p> <p>9 without the use of the instructions.</p> <p>10 Q. Let's talk about that for a</p> <p>11 moment. You have a product that's used at</p> <p>12 height, right?</p> <p>13 A. Correct.</p> <p>14 Q. And it's well documented in all</p> <p>15 kind of different literature if you fall</p> <p>16 from height you can be seriously injured or</p> <p>17 killed, right?</p> <p>18 A. Okay. Yes.</p> <p>19 Q. That's an open and obvious danger,</p> <p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. And it's a danger that was well</p> <p>23 known to Mr. Vandine? He agreed and</p> <p>24 acknowledged it, right?</p> <p>25 A. Correct, he did.</p>	<p style="text-align: right;">156</p> <p>1 the instruction manual that allows the</p> <p>2 operator to have access to those out in the</p> <p>3 field. Prior to that, there was -- there</p> <p>4 was no provision for the likes of the</p> <p>5 instruction manual to be attached or adhered</p> <p>6 to the stand.</p> <p>7 Q. Well, you've been hunting for 20</p> <p>8 years. You know that the instruction</p> <p>9 manuals are where the manufacturer puts how</p> <p>10 to install and assemble the product, right?</p> <p>11 A. Correct.</p> <p>12 Q. When you're using a product, such</p> <p>13 a treestand that has an inherent risk of</p> <p>14 falling, whenever you're at height, as an</p> <p>15 engineer don't you think users should read</p> <p>16 and follow those instructions prior to using</p> <p>17 the product?</p> <p>18 A. It would be recommended to read</p> <p>19 the instructions. Mr. Vandine testified</p> <p>20 that he thought he fully understood how the</p> <p>21 stand operated.</p> <p>22 Q. But it's your opinion that he</p> <p>23 should have read the instructions and</p> <p>24 followed them, right?</p> <p>25 A. He should have read the</p>

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40 (157 to 160)

<p style="text-align: right;">157</p> <p>1 instructions, but it is foreseeable within</p> <p>2 industry, and within industry of all</p> <p>3 products that in the instruction manuals are</p> <p>4 not always read and not read in full detail.</p> <p>5 Q. But you agree that he should have</p> <p>6 read the instructions prior to using the</p> <p>7 treestand, right?</p> <p>8 A. It would have been educational to</p> <p>9 him to read the instructions, yes.</p> <p>10 Q. All right. Now, going back to</p> <p>11 your criticism of the warning label. You're</p> <p>12 specifically -- in reference, it's your</p> <p>13 reference to ASTM 2121-13, right?</p> <p>14 A. I believe so.</p> <p>15 Q. I'm going show you what we marked</p> <p>16 as Exhibit 4, which happens to be 2121-13,</p> <p>17 so you can follow along with me. All right?</p> <p>18 (Standard Practice for Treestand</p> <p>19 Labels, marked Defendant's</p> <p>20 Exhibit No. 4, for identification.)</p> <p>21 BY MR. DARIA:</p> <p>22 Q. This is specifically the standard</p> <p>23 that's referenced into your report, right?</p> <p>24 MR. DARIA: Objection to form.</p> <p>25</p>	<p style="text-align: right;">159</p> <p>1 certified the product to meet the standard.</p> <p>2 Your opinion is that it doesn't apply,</p> <p>3 because at some point in time you may not be</p> <p>4 able to read it while climbing?</p> <p>5 A. And the position of the label does</p> <p>6 not comply with the placement locations that</p> <p>7 are recommended by the standard.</p> <p>8 Q. Now, specifically you're talking</p> <p>9 about 6.3.1, right? Section 6.3 of ASTM</p> <p>10 2121-13 references the selection of</p> <p>11 placement; do you see that?</p> <p>12 A. Correct.</p> <p>13 Q. And then it goes down in 6.3.1, it</p> <p>14 says, "Labels and warnings shall be placed</p> <p>15 such that they are visible to user when</p> <p>16 mounting the treestand or climbing stick and</p> <p>17 when it is in use sitting or standing." Do</p> <p>18 you see that?</p> <p>19 A. I do see that.</p> <p>20 Q. Did I read it correctly?</p> <p>21 A. I believe you did.</p> <p>22 Q. So first of all, you agree that</p> <p>23 this label is visited when mounted, right?</p> <p>24 A. It would be visible from where</p> <p>25 you're beginning to ascend the tree being a</p>
<p style="text-align: right;">158</p> <p>1 BY MR. SUTTON:</p> <p>2 Q. You had the page open. You</p> <p>3 already had it open. If you read page 3 of</p> <p>4 your report it says, "It is our opinion that</p> <p>5 the 2015 Summit Viper ASTM F2122-13 Standard</p> <p>6 Practice for Treestand Safety Devices at</p> <p>7 Section 6.2.2 states that 'Labels and</p> <p>8 warnings shall be placed on the unit in</p> <p>9 accordance with practice F2121."</p> <p>10 A. Correct.</p> <p>11 Q. Which is then this standard. Then</p> <p>12 you go on to cite this standard why you</p> <p>13 don't think it was attached correctly.</p> <p>14 A. Correct.</p> <p>15 Q. I have the 2122 standard here if</p> <p>16 you want to read it, but I think the only</p> <p>17 reference is that it says it has to be</p> <p>18 attached in accordance with 2122-13.</p> <p>19 A. Regarding the labels, yes.</p> <p>20 Q. Yes. Okay.</p> <p>21 All right, now, according to your</p> <p>22 report you say that it was not compliant</p> <p>23 with this standard despite the fact that</p> <p>24 multiple testing firms specifically tasked</p> <p>25 with certifying this product have repeatedly</p>	<p style="text-align: right;">160</p> <p>1 fabric label and positioned the way it is on</p> <p>2 the seat may be difficult to see from a</p> <p>3 ground position standing next to the stand.</p> <p>4 Q. Any warning label no matter where</p> <p>5 it's placed, in order to read it you have to</p> <p>6 actually move to view it, right?</p> <p>7 A. Unless it's adhered in a way</p> <p>8 that's directly in front of your face.</p> <p>9 Q. Well, in a climbing treestand, a</p> <p>10 hunter when using a stand has to look at the</p> <p>11 tree when climbing up and climbing down,</p> <p>12 right?</p> <p>13 A. Correct.</p> <p>14 Q. There are no climbing treestands</p> <p>15 which face away from the tree, right?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. Then they can use the stand by</p> <p>18 standing on the platform, right?</p> <p>19 A. Correct.</p> <p>20 Q. And they can fire in most every</p> <p>21 direction except for that portion which is</p> <p>22 blocked by the physical tree, right?</p> <p>23 A. Okay.</p> <p>24 Q. You understand that?</p> <p>25 A. Yes.</p>

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41 (161 to 164)

<p style="text-align: right;">161</p> <p>1 Q. And that includes them turning</p> <p>2 around and facing near the tree and shooting</p> <p>3 back behind them, right?</p> <p>4 A. Correct.</p> <p>5 Q. That happens with hunters all the</p> <p>6 time, right?</p> <p>7 A. It does happen, yes.</p> <p>8 Q. They can also face frontwards and</p> <p>9 shoot at a deer, right?</p> <p>10 A. That's correct.</p> <p>11 Q. They could also be sitting in the</p> <p>12 seat, right?</p> <p>13 A. Correct.</p> <p>14 Q. Is it your opinion that a label</p> <p>15 has to be placed in every single direction</p> <p>16 to meet this standard?</p> <p>17 A. To meet the standard, no, it does</p> <p>18 not have to be placed in every single</p> <p>19 direction. It should be placed in a way</p> <p>20 that's consistent with the recommended</p> <p>21 placements that it gives.</p> <p>22 The placements include the top</p> <p>23 side of the platform as given in 3.2.7.,</p> <p>24 which I believe is referencing -- which is</p> <p>25 in a horizontal structural area of the</p>	<p style="text-align: right;">163</p> <p>1 with the QuickDraw springs or assuring that</p> <p>2 the QuickDraw springs are properly</p> <p>3 positioned behind the climbing cable.</p> <p>4 Q. In all due respect, the attachment</p> <p>5 of any climbing treestand is unique to that</p> <p>6 climbing treestand; they're all different,</p> <p>7 right?</p> <p>8 A. Some share similarities between</p> <p>9 different brands, but yes, they're all</p> <p>10 different.</p> <p>11 Q. So it's not a special</p> <p>12 characteristic that makes it different that</p> <p>13 needs a warning label. In fact, no climbing</p> <p>14 treestand, not a single one in this industry</p> <p>15 has a warning label that at the attachment</p> <p>16 section tells you how to put it in the</p> <p>17 product, right?</p> <p>18 A. I haven't reviewed every climbing</p> <p>19 treestand on the market.</p> <p>20 Q. Because you don't have the</p> <p>21 background in treestands.</p> <p>22 Are you aware as you sit here</p> <p>23 today of any treestands that have such a</p> <p>24 warning label?</p> <p>25 A. I am not.</p>
<p style="text-align: right;">162</p> <p>1 treestand on which the user stands and</p> <p>2 places his feet. So that could be a</p> <p>3 standing platform.</p> <p>4 But along any top upper side of a</p> <p>5 back bar, back bars can be flexible or</p> <p>6 rigid. In this application a warning or</p> <p>7 label near the installation of the back bar</p> <p>8 would have been appropriate.</p> <p>9 Along any flat, top side of flat</p> <p>10 surface on a main structural support. That</p> <p>11 allows the opportunity to place a warning</p> <p>12 label along any of the V brace or the upper</p> <p>13 right arms that may be visible to a person.</p> <p>14 And should they be placed on the upright</p> <p>15 arms it may be visible in the seated</p> <p>16 position as well.</p> <p>17 And then additionally on the top</p> <p>18 upper portion of the component requiring a</p> <p>19 special label or warning. The attachment of</p> <p>20 the climbing cable to the climb bracket is a</p> <p>21 unique feature to the Summit climbing</p> <p>22 treestand and could warrant a special</p> <p>23 warning or label at that position.</p> <p>24 Additionally, the warning or label</p> <p>25 could warn against the inadvertent contact</p>	<p style="text-align: right;">164</p> <p>1 Q. Okay. Now, let's go back to this</p> <p>2 sentence. You read, from the second</p> <p>3 sentence it says, "the following placement</p> <p>4 locations are recommended." Do you see</p> <p>5 that?</p> <p>6 A. I do see that.</p> <p>7 Q. There we go with that word</p> <p>8 recommended again. We went over that</p> <p>9 before. There is a difference between a</p> <p>10 recommendation and a mandate, right?</p> <p>11 A. I would agree with that.</p> <p>12 Q. The standard does not require the</p> <p>13 placement at those four positions, does it?</p> <p>14 A. It's provides a recommendation and</p> <p>15 Summit had the ability to follow those</p> <p>16 recommendations but chose to implement a</p> <p>17 fabric warning label on the seat.</p> <p>18 Q. So summit who has had engineers</p> <p>19 sitting on the ASTM standards committee for</p> <p>20 well over a decade, you're suggesting is</p> <p>21 violating the standard that they helped</p> <p>22 write?</p> <p>23 A. I am suggesting that they could</p> <p>24 have adhered to the standard more</p> <p>25 accurately.</p>

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42 (165 to 168)

<p style="text-align: right;">165</p> <p>1 Q. You're basically suggesting that</p> <p>2 engineers that have been sitting on the ASTM</p> <p>3 standard committee that helped write this</p> <p>4 standard that you're referring to are</p> <p>5 violating the standard they helped write in</p> <p>6 their own products?</p> <p>7 A. They're not following the</p> <p>8 recommended practices based on the standard.</p> <p>9 Q. Despite the fact that every</p> <p>10 single -- for 20 years, every single company</p> <p>11 that specializes in certifying whether or</p> <p>12 not the product meets that standard has</p> <p>13 certified this product and agreed under that</p> <p>14 standard it meets the standard, you're still</p> <p>15 standing by that testimony, right?</p> <p>16 A. These provide the most optimal</p> <p>17 position based on the standard.</p> <p>18 Q. That's not my question. Despite</p> <p>19 the fact that Summit has had folks sitting</p> <p>20 on the ASTM committee, helped write the</p> <p>21 standard, and passed the standard, and has</p> <p>22 had this for 20 years submitted to at least</p> <p>23 three different companies to certify it</p> <p>24 under this standard, and they've all agreed</p> <p>25 it passed the standard many, many times, you</p>	<p style="text-align: right;">166</p> <p>1 believe that you -- an engineer that's never</p> <p>2 worked in the treestand field -- can say</p> <p>3 that yeah, this doesn't meet the standard</p> <p>4 despite what all of those people believe.</p> <p>5 Is that your testimony in front of a jury?</p> <p>6 A. My testimony is this does not meet</p> <p>7 the standard outlined here.</p> <p>8 Q. Okay. Let's talk about that for a</p> <p>9 second. At the beginning of this deposition</p> <p>10 I asked you a question; do you remember</p> <p>11 that?</p> <p>12 A. The question of or.</p> <p>13 Q. Yeah. And this standard happens</p> <p>14 to use the phrase or in it, or the word or,</p> <p>15 doesn't it?</p> <p>16 A. Yes, it does.</p> <p>17 Q. It says that "The warning label</p> <p>18 shall be placed such that they are visible</p> <p>19 to the user when mounting the treestand or</p> <p>20 climbing stick when it is in use."</p> <p>21 And you've already agreed that</p> <p>22 that warning label would be visible to the</p> <p>23 user when they were using the treestand</p> <p>24 attaching that seat to the tree, right?</p> <p>25 A. It would be visible -- likely</p>
<p style="text-align: right;">167</p> <p>1 visible, during that certain phase of the</p> <p>2 use of the treestand which is the attachment</p> <p>3 of the seat to the tree.</p> <p>4 Q. And this says, "sitting or</p> <p>5 standing," in parentheses. Giving a choice,</p> <p>6 right?</p> <p>7 A. It does say that.</p> <p>8 Q. So a person standing can certainly</p> <p>9 read that warning label, right?</p> <p>10 A. If they were to look down at the</p> <p>11 seat, yes.</p> <p>12 Q. And so under the text of this</p> <p>13 standard, a person standing looking at the</p> <p>14 tree, for instance, connecting the seat to</p> <p>15 the back of the tree, the warning label is</p> <p>16 visible to them, true?</p> <p>17 A. During the phase of connecting the</p> <p>18 seat to the tree. The warning label is not</p> <p>19 visible during all or the majority of the</p> <p>20 remaining uses of the stand.</p> <p>21 Q. It doesn't say in the standard</p> <p>22 that it has to be always visible, and that's</p> <p>23 not possible, considering you can turn 360</p> <p>24 degrees in the product, right?</p> <p>25 A. Right. I agree with that.</p>	<p style="text-align: right;">168</p> <p>1 Q. It just says that it has to be</p> <p>2 visible when in use and you agree with me</p> <p>3 that the standard is being used when you're</p> <p>4 standing in it putting that seat on it,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. So it is visible in use at that</p> <p>8 time, true?</p> <p>9 A. At that time.</p> <p>10 Q. Okay. Now, let's step back a</p> <p>11 little bit. Let's talk a little bit about</p> <p>12 the effect of other cases. You made some</p> <p>13 mention in your report that Summit has had</p> <p>14 other cases, right?</p> <p>15 A. Based on the information provided</p> <p>16 in discovery, there have been other cases</p> <p>17 brought against Summit, yes.</p> <p>18 Q. Okay. Would you agree that simply</p> <p>19 because somebody makes an allegation in a</p> <p>20 court of law doesn't necessarily make it</p> <p>21 true?</p> <p>22 A. I would agree with that. Those</p> <p>23 are claims brought against Summit.</p> <p>24 Q. You would agree, would you not,</p> <p>25 based upon your involvement in this industry</p>

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MSJ_JA000227

Transcript of Jarrett Waters
Conducted on February 7, 2024

43 (169 to 172)

169	<p>1 for the past five and a half years or so, 2 that allegations are frequently proven 3 wrong. 4 A. They can be proven wrong, yes. 5 Q. And a company has a right to 6 defend themselves, right? 7 A. I would agree with that. 8 Q. And then many times juries and 9 judges make determination on whether a 10 product is defective in product liability 11 suits, right? 12 A. If a jury is a part of that 13 decision, yes. 14 Q. And many times judges and juries 15 return verdicts in favor of the defendant? 16 A. I don't have statistics or numbers 17 to rely on. 18 Q. You're not of the opinion that 19 simply because someone has made a claim that 20 a product designer should change its product 21 design. 22 A. Please repeat that again. 23 Q. You're not of the opinion that 24 simply because somebody has made a claim 25 about something that a product designer</p>	171	<p>1 Q. In the event that a company 2 investigates the claims, believes they have 3 no merit, defend itself and a jury comes 4 back, or a judge throws the case out, you 5 would agree that those things help vindicate 6 the manufacturer's designs, right? 7 A. Again, I can see how that could be 8 interpreted that way. 9 I think it's up for the designer 10 to understand and foresee all the potential 11 uses or misuses of their product, and then 12 they should evaluate regardless of what a 13 judge or jury comes back with whether 14 they -- they should conduct a separate 15 analysis regarding the risk in the claims 16 and determine if they are viable or any 17 design changes are warranted. 18 Q. Are you aware that Mr. Woller and 19 Mr. Nelson have investigated the design 20 claims against the Viper product and they've 21 successfully defended all these cases? 22 A. I don't have access to all of 23 those materials. 24 Q. Are you aware that every single 25 jury that's decided the issue has come back</p>
170	<p>1 should change the product design? 2 A. I believe a claim should initiate 3 a process of the designer to evaluate 4 whether the features of the stand are viable 5 for that claim, and whether the features of 6 the stand successfully mitigate or reduce 7 the risk brought forth by that claim -- 8 Q. Sure then you would have -- 9 A. -- should initiate a design review 10 or additional risk analysis. 11 Q. Sure. A manufacturer can 12 investigate the allegations and determine 13 whether or not they want to make changes, 14 right? 15 A. Sure. 16 Q. And a manufacturer has the right 17 if it disagrees to defend itself, right? 18 A. I would believe so, yes. 19 Q. And if a judge or a jury returns a 20 verdict in their favor, it helps suggest to 21 them that maybe their design was a good one, 22 right? 23 A. I can see how it would. I still 24 believe that the risk analysis and further 25 design exercises should be conducted.</p>	172	<p>1 with a quick defense verdict? 2 A. I'm not aware of that. 3 Q. Are you aware that multiple cases 4 have been thrown out by judges for failing 5 to state a claim of design defect or prove a 6 design defect? 7 A. I'm not aware of that. 8 Q. Do you have any factual basis of 9 any other claims that were made against 10 Summit? In other words, are you claiming 11 that any of them are substantially similar 12 to the present case? 13 A. I have not reviewed the details of 14 all of those previous claims to know if 15 they're substantially similar or not. 16 Q. Fair enough. 17 Do you know of any other claims in 18 which a person admitted to intentionally 19 removing the cable from the cable bracket at 20 height to move it around a limb? 21 A. I do not know the details of those 22 claims to know if it involved that or not. 23 I think removing the cable bracket at height 24 is foreseeable. 25 Mr. Woller's original patent</p>

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Transcript of Jarrett Waters
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44 (173 to 176)

<p style="text-align: right;">173</p> <p>1 discusses that the design is acceptable and</p> <p>2 created in a way that allowed the treestand</p> <p>3 to be adjustable while climbing. And the</p> <p>4 fact that Summit warns and instructs so</p> <p>5 heavily against it indicates to me that that</p> <p>6 is a foreseeable misuse or foreseeable use</p> <p>7 of the treestand and therefore effort should</p> <p>8 be taken to ensure or design out ways that</p> <p>9 would allow the cable to disconnect under</p> <p>10 the circumstances.</p> <p>11 Q. Now, I saw that in your report</p> <p>12 that you suggested that the patent somehow</p> <p>13 suggests that the cable can be removed at</p> <p>14 height; do you recall that?</p> <p>15 A. I do.</p> <p>16 Q. Can you point to any portion in</p> <p>17 the -- in the actual patent that suggests</p> <p>18 the cable can be removed?</p> <p>19 And if it helps you there was a</p> <p>20 question asked of Mr. Woller on page 93 of</p> <p>21 his deposition by Mr. Daria where he</p> <p>22 references a specific portion of the patent.</p> <p>23 The quote used by Mr. Daria -- and I believe</p> <p>24 this is correct, when I double-checked the</p> <p>25 patent stated "The use of the cleats and a</p>	<p style="text-align: right;">175</p> <p>1 via its angle while up in the air.</p> <p>2 Q. In fact, if you go back to those</p> <p>3 2002 videos from the ones that you had, show</p> <p>4 one of the Wollers telling you -- it could</p> <p>5 have been Mr. South as well, telling you how</p> <p>6 to do that, without ever moving the cable,</p> <p>7 right?</p> <p>8 A. It likely did.</p> <p>9 Q. So one of the things that it's</p> <p>10 touting about the design is that you can</p> <p>11 adjust the angle on this without ever</p> <p>12 removing or moving the cable, right?</p> <p>13 A. I believe the patent claim was</p> <p>14 addressing the shape of the covers and the</p> <p>15 brackets relative to the ease of adjustment,</p> <p>16 implying that the cable could be adjusted</p> <p>17 within the bracket as opposed to the cable</p> <p>18 being adjusted on the tree.</p> <p>19 "The use of the cleats and a</p> <p>20 series of nuts on the ends of the cable also</p> <p>21 make the climbing treestand very easy to</p> <p>22 adjust initially or as one ascends the</p> <p>23 tree."</p> <p>24 Q. Right.</p> <p>25 A. And the previous sentence was,</p>
<p style="text-align: right;">174</p> <p>1 series of nuts on the ends of the cable also</p> <p>2 makes the climbing tree very easy adjust</p> <p>3 initially or as one ascends the tree. The</p> <p>4 diameter of the tree decreases as one</p> <p>5 climbs." Is that the provision that you're</p> <p>6 relying on?</p> <p>7 A. Yes.</p> <p>8 Q. It doesn't anywhere in that</p> <p>9 sentence whatsoever in the patent suggest</p> <p>10 that the cables can be taken out at height,</p> <p>11 does it?</p> <p>12 A. It implies that they can be</p> <p>13 adjusted at height which Summit warns that</p> <p>14 adjustment is similar to the removal of the</p> <p>15 cable in their instruction manual.</p> <p>16 Q. My specific question is, first,</p> <p>17 does it say anywhere in there that the cable</p> <p>18 can be removed from the treestand at height?</p> <p>19 A. No, it says adjusted.</p> <p>20 Q. Now, this cable design, because of</p> <p>21 the way it's designed, you're aware, are you</p> <p>22 not, can be -- the angle can be adjusted</p> <p>23 without removing the cable because of its</p> <p>24 inherent design; do you know that?</p> <p>25 A. Yes, the treestand can be adjusted</p>	<p style="text-align: right;">176</p> <p>1 "Also the keyhole shape opening in the</p> <p>2 cleats and safety covers make engagement of</p> <p>3 the cleats within that make the cable very</p> <p>4 stable, reliable, and foolproof."</p> <p>5 Q. Yeah, and what it says in this</p> <p>6 sentence is, "The use of the cleats and a</p> <p>7 series of nuts on the end of the cable also</p> <p>8 makes the climbing treestand very easy to</p> <p>9 adjust." do you see that?</p> <p>10 A. I do see that.</p> <p>11 Q. One of the features of this</p> <p>12 product is the cleats and the nuts on the</p> <p>13 cables, keep that cable in place so that</p> <p>14 when you move it, it moves out into space</p> <p>15 behind the tree allowing you to make</p> <p>16 adjustments, right?</p> <p>17 A. The -- okay, yes.</p> <p>18 Q. And there is nothing in this</p> <p>19 sentence that says anything about movement</p> <p>20 of the cables in that cable bracket</p> <p>21 assembly, does it?</p> <p>22 A. The patent is referring to design</p> <p>23 that has no QuickDraw spring or a locking</p> <p>24 device behind the cable stop to prevent that</p> <p>25 movement.</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

45 (177 to 180)

<p style="text-align: right;">177</p> <p>1 Q. Right. It's talking about the</p> <p>2 cleats and the series of nuts. As we talk</p> <p>3 about this cable is made so that it fits in</p> <p>4 this cable bracket it wants to move out.</p> <p>5 And it has a friction component on it so</p> <p>6 that it -- it wants to hold that cable in</p> <p>7 place. Right?</p> <p>8 A. I'm following you. On a new cable</p> <p>9 that still has the ability and wants to flex</p> <p>10 outward, yes.</p> <p>11 Q. Even the ones that you tested</p> <p>12 later still go out?</p> <p>13 A. To some degree, yes, at a lesser</p> <p>14 degree of change.</p> <p>15 Q. There's still a friction component</p> <p>16 that's going to keep it and let it use it so</p> <p>17 the cable moves out to space, right?</p> <p>18 A. Okay.</p> <p>19 Q. And then allows you to adjust it</p> <p>20 on the tree, right?</p> <p>21 A. Okay.</p> <p>22 Q. Are you aware that for instance,</p> <p>23 you read Mr. Saunders' report, you're aware</p> <p>24 that Mr. Saunders actually tested it by</p> <p>25 taking the springs out and climbing up and</p>	<p style="text-align: right;">179</p> <p>1 of the climbing treestand to move over and</p> <p>2 above a limb?</p> <p>3 A. I am not personally aware of all</p> <p>4 the contents of instruction manuals and what</p> <p>5 they warn against.</p> <p>6 Because the design allows for the</p> <p>7 disconnection of a cable to wrap around a</p> <p>8 tree initially as the designer of the</p> <p>9 product it's foreseeable that somebody may</p> <p>10 choose to adjust that cable length at height</p> <p>11 and may disconnect it, no different than</p> <p>12 what Mr. Vandine did it.</p> <p>13 Q. Well, aren't you aware that every</p> <p>14 manufacturer of climbing treestands tells</p> <p>15 the user not to do that?</p> <p>16 A. I wouldn't be surprised if that's</p> <p>17 what they warn against.</p> <p>18 Q. Are aware that that's what's</p> <p>19 taught in treestand videos, not to remove</p> <p>20 your cables from the climbing treestand?</p> <p>21 A. I would not be shocked if that's</p> <p>22 what they instruct.</p> <p>23 Q. Because that's the safe use of the</p> <p>24 treestand, right?</p> <p>25 A. That is the safer way to use the</p>
<p style="text-align: right;">178</p> <p>1 down with it, videoing it, and showing the</p> <p>2 cables don't move out of place because of</p> <p>3 that friction?</p> <p>4 A. Again, I haven't seen his videos</p> <p>5 and his photos or the condition of the cable</p> <p>6 that he had while he was climbing. I</p> <p>7 believe he references tree diameter, but</p> <p>8 again, and all those factors play into the</p> <p>9 ability of that cable to move fore and aft</p> <p>10 within the cable bracket.</p> <p>11 Q. Okay. Any other part of the</p> <p>12 patent that you think supports your opinion</p> <p>13 that Summit admitted it was foreseeable that</p> <p>14 somebody was going to remove a cable at</p> <p>15 height?</p> <p>16 A. No other part of the patent, no.</p> <p>17 Q. By the way, are you aware of any</p> <p>18 climbing treestand whatsoever, that states</p> <p>19 you can remove a cable or whatever</p> <p>20 attachment method it has at height to move</p> <p>21 around a tree limb?</p> <p>22 A. Please repeat.</p> <p>23 Q. Are you aware of any climbing</p> <p>24 treestand whatsoever in this industry that</p> <p>25 suggests that you can remove the attachment</p>	<p style="text-align: right;">180</p> <p>1 stand, yes. Eliminating its connection to</p> <p>2 the back of the tree, does create an</p> <p>3 additional risk, which is foreseeable from</p> <p>4 the design phase.</p> <p>5 As Mr. Vandine did it he was fully</p> <p>6 supported and his weight was fully supported</p> <p>7 by the foot section which he testified he</p> <p>8 had no intention of moving and he was only</p> <p>9 adjusting the top section.</p> <p>10 Q. Well, the point of the fact is, as</p> <p>11 an engineer talking to a reasonable degree</p> <p>12 of engineering certainty, you believe that a</p> <p>13 user should not remove a cable at height</p> <p>14 when using the Summit treestand, true?</p> <p>15 A. I think it's foreseeable that</p> <p>16 people are going to do it.</p> <p>17 Q. It's not my question, sir. My</p> <p>18 question is: Do you believe as an engineer,</p> <p>19 to a reasonable degree of engineering</p> <p>20 certainty, that a user should not remove a</p> <p>21 cable at height because there are inherent</p> <p>22 dangers, true?</p> <p>23 A. Disconnecting that treestand at</p> <p>24 height does introduce inherent dangers, yes.</p> <p>25 Q. So you agree with me, true?</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

46 (181 to 184)

181	<p>1 A. I believe so, yes.</p> <p>2 Q. Okay. Now, let's go back a little</p> <p>3 bit on the instructions.</p> <p>4 Instructions are the place that</p> <p>5 the manufacturer has the ability to</p> <p>6 communicate the safe use of product to the</p> <p>7 user, right?</p> <p>8 A. Okay. Yes.</p> <p>9 Q. You agree with that, right?</p> <p>10 A. Yes.</p> <p>11 Q. Instructions are used throughout</p> <p>12 multiple different products to communicate</p> <p>13 to the user, right?</p> <p>14 A. I agree with that.</p> <p>15 Q. It can tell you how to properly</p> <p>16 assemble the product, what you'd find in the</p> <p>17 instructions, right?</p> <p>18 A. Yes, there are other tools and</p> <p>19 availability to designers other than the</p> <p>20 instructions to communicate to the users, as</p> <p>21 far as what the intended use or safe</p> <p>22 assembly of a product is. And one of those</p> <p>23 would be the use of a safety cover, or some</p> <p>24 sort of guard that locks out a keyhole</p> <p>25 bracket. Those are tools that a</p>	183	<p>1 instruction manual for this product.</p> <p>2 (Summit Climbing Treestands</p> <p>3 Instruction Manual, marked Defendant's</p> <p>4 Exhibit No. 5, for identification.)</p> <p>5 BY MR. SUTTON:</p> <p>6 Q. Have you seen this document</p> <p>7 before?</p> <p>8 A. I have, yes.</p> <p>9 Q. And in these instruction manuals</p> <p>10 they describe a variety of different things</p> <p>11 in them about the safe use of this product,</p> <p>12 true?</p> <p>13 A. Yes.</p> <p>14 Q. Incidentally, this manual</p> <p>15 specifically and repeatedly tells the user</p> <p>16 to make sure that they read it and follow</p> <p>17 all the warnings and instructions in it,</p> <p>18 true?</p> <p>19 A. I believe it does.</p> <p>20 Q. Do the warnings also talk about</p> <p>21 the requirement and necessity to wear a full</p> <p>22 body harness?</p> <p>23 A. Yes, the warnings do include</p> <p>24 verbiage about full body harness use.</p> <p>25 Q. And they are repeatedly stated</p>
182	<p>1 manufacturer and designer have to</p> <p>2 communicate to a user.</p> <p>3 Q. Did I ask you about safety covers?</p> <p>4 A. You did not.</p> <p>5 Q. I was asking instructions, right?</p> <p>6 A. Instructions and that they are the</p> <p>7 only way for somebody to communicate.</p> <p>8 Q. Did I say "only way," or did I say</p> <p>9 it's a place where a manufacturer tells a</p> <p>10 user how to properly use the product?</p> <p>11 A. Okay. It's a place, yes.</p> <p>12 Q. Okay. And it's a place where the</p> <p>13 user commonly describes how to safely use</p> <p>14 that product, right?</p> <p>15 A. It would describe its safe use,</p> <p>16 yes.</p> <p>17 Q. How to safely maintain the</p> <p>18 product, right?</p> <p>19 A. Likely, yes.</p> <p>20 Q. How to safely install, assemble,</p> <p>21 et cetera, the product, right?</p> <p>22 A. Yes.</p> <p>23 Q. Now, summit included instructions</p> <p>24 with the subject product. I'm showing what</p> <p>25 we've marked as Exhibit 5, which is the</p>	184	<p>1 throughout this, are they not?</p> <p>2 A. They are.</p> <p>3 Q. As far as these specific -- I</p> <p>4 didn't see it any in your report, I just</p> <p>5 want make sure. As far as the content of</p> <p>6 this specific instruction manual it didn't</p> <p>7 appear you had criticisms of them. True?</p> <p>8 A. The instructions don't provide any</p> <p>9 warning against inadvertent contact or</p> <p>10 entanglement with the QuickDraw retention</p> <p>11 spring.</p> <p>12 Q. Okay. Now, you've brought that up</p> <p>13 several times, so let's talk about.</p> <p>14 Anything else?</p> <p>15 A. Not that I'm aware of.</p> <p>16 Q. Now, you used two terms in that</p> <p>17 answer. You said, "contact with and</p> <p>18 entanglement with the QuickDraw spring,"</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Now, contact with the</p> <p>22 trigger on the cable spring is different</p> <p>23 than entanglement, right?</p> <p>24 A. Could be.</p> <p>25 Q. If you look on page 29 of your</p>

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47 (185 to 188)

185	<p>1 report, you have a photograph that you've</p> <p>2 taken showing a person's hand near the</p> <p>3 trigger assembly, right?</p> <p>4 A. The photograph taken from Summit's</p> <p>5 website shows a climber's hand near or</p> <p>6 within the QuickDraw assembly while climbing</p> <p>7 the tree.</p> <p>8 Q. It actually doesn't show anybody's</p> <p>9 hand within the QuickDraw assembly. If</p> <p>10 somebody is on the outside and holding that,</p> <p>11 and gripping it, it actually pushes the</p> <p>12 QuickDraw spring into further engagement,</p> <p>13 right?</p> <p>14 A. It can if they are fully gasping</p> <p>15 it.</p> <p>16 The lower photo represents the</p> <p>17 index finger within the QuickDraw assembly</p> <p>18 and the QuickDraw assembly is below the</p> <p>19 location of the cable stop.</p> <p>20 Q. The QuickDraw assembly is not --</p> <p>21 the finger is not in the QuickDraw assembly</p> <p>22 in that photograph?</p> <p>23 A. Okay.</p> <p>24 Q. It's behind it. Okay?</p> <p>25 So if your finger is behind the</p>	187	<p>1 Q. -- and you're using this product</p> <p>2 to go up or go down the tree?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. What is the purpose you're</p> <p>5 using your hands for?</p> <p>6 A. Stabilizing the stand as you make</p> <p>7 climbing movement.</p> <p>8 Q. That's to hold the stand, right?</p> <p>9 A. Correct.</p> <p>10 Q. Which is a gripping motion, right?</p> <p>11 A. Yes.</p> <p>12 Q. And so if your fingers are inside</p> <p>13 that trigger assembly, and you grip further</p> <p>14 onto that platform arm, you're not pulling</p> <p>15 the trigger at all, right?</p> <p>16 A. It depends how your hand grips the</p> <p>17 trigger assembly, yes. You could apply a</p> <p>18 rearward motion which would disengage the</p> <p>19 QuickDraw assembly.</p> <p>20 Q. In order to do that, like is show</p> <p>21 in your video, you have to actually put your</p> <p>22 finger in, and then pull in a downward angle</p> <p>23 away from the tree, right?</p> <p>24 A. It could be done in a motion where</p> <p>25 one's thumb is still over the top of the</p>
186	<p>1 QuickDraw assembly and you bump the</p> <p>2 QuickDraw assembly it's actually -- the only</p> <p>3 thing it's going to do is push it further</p> <p>4 into engagement, right?</p> <p>5 A. It would further engage the</p> <p>6 spring, yes.</p> <p>7 Q. And in the photograph above if you</p> <p>8 have your hand and you push it over the --</p> <p>9 completely over the QuickDraw assembly and</p> <p>10 you squeeze your hand, that's going to also</p> <p>11 put it further into engagement, right?</p> <p>12 A. If it is fully over the bottom</p> <p>13 part of the QuickDraw assembly, yes, it</p> <p>14 would be push further in engagement.</p> <p>15 That photo makes it look like the</p> <p>16 fingers are within the lower portion of the</p> <p>17 QuickDraw assembly. So his ring and pinky</p> <p>18 finger could be applying forward pressure on</p> <p>19 the spring as well.</p> <p>20 Q. Well, let's talk about -- I</p> <p>21 disagree with you but we don't need to argue</p> <p>22 about it.</p> <p>23 So let's say you do put your hands</p> <p>24 inside the trigger assembly --</p> <p>25 A. Sure.</p>	188	<p>1 upright arm and his lower fingers are</p> <p>2 engaging or -- engaging the QuickDraw</p> <p>3 assembly in a rearward motion which would</p> <p>4 disengage it.</p> <p>5 Q. That's not consistent with moving</p> <p>6 the treestand at the same time, right?</p> <p>7 A. It's consistent with how someone</p> <p>8 might grasp the treestand to move it.</p> <p>9 Q. You believe that pulling the</p> <p>10 trigger in a downward motion away from the</p> <p>11 tree is consistent with somebody moving an</p> <p>12 upper portion of the climbing treestand</p> <p>13 while using this product?</p> <p>14 A. I think it's foreseeable that</p> <p>15 somebody may entangle their hand within that</p> <p>16 QuickDraw assembly while they were climbing.</p> <p>17 Q. That's not my question. My</p> <p>18 question is: When you're actually using</p> <p>19 this product -- you used the product. Now</p> <p>20 granted your product that you used didn't</p> <p>21 have a QuickDraw spring.</p> <p>22 A. Correct.</p> <p>23 Q. But you used the product and in</p> <p>24 order to use this product, you use it sort</p> <p>25 of an inchworm like fashion, right?</p>

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Conducted on February 7, 2024

48 (189 to 192)

<p style="text-align: right;">189</p> <p>1 A. Sure.</p> <p>2 Q. Platform's placed on the tree,</p> <p>3 cable goes around it, right?</p> <p>4 A. (No audible response.)</p> <p>5 Q. Right?</p> <p>6 A. Correct.</p> <p>7 Q. The upper portion is placed on a</p> <p>8 tree, cable goes around it, user gets on,</p> <p>9 has his safety harness attached to the tree</p> <p>10 and begins to climb, right?</p> <p>11 A. Correct.</p> <p>12 Q. And they do so by holding that</p> <p>13 climbing portion and pulling it up higher,</p> <p>14 right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay.</p> <p>17 Then they place their weight</p> <p>18 either on the back bar by sitting, or on</p> <p>19 their elbows, and they tilt up the platform</p> <p>20 and they bring it up higher and attach that</p> <p>21 to the tree, right?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. In none of those motions is</p> <p>24 the user actually pulling their hand away</p> <p>25 from the tree in the ordinary normal use of</p>	<p style="text-align: right;">191</p> <p>1 area. It is foreseeable that it could be</p> <p>2 actuated.</p> <p>3 Q. Well, in what way? They have</p> <p>4 to -- first of all, you measured the force</p> <p>5 that you have to pull this spring in a</p> <p>6 downward -- an exactly downward angle</p> <p>7 between, what, eight to ten pounds, right?</p> <p>8 A. Some as low as, I believe, six;</p> <p>9 but, yes, in that range.</p> <p>10 Q. I thought the lowest was eight,</p> <p>11 but...</p> <p>12 A. I --</p> <p>13 Q. I thought you got higher, like 16,</p> <p>14 but -- but regardless, it takes -- that's</p> <p>15 not a little bit of weight. I mean some</p> <p>16 people workout with five pound weights or</p> <p>17 ten pound weights.</p> <p>18 A. It's not insignificant. There is</p> <p>19 variability, as shown in that testing, in</p> <p>20 the spring's retraction force, that -- but</p> <p>21 when somebody is putting their weight or</p> <p>22 supporting their entire weight through their</p> <p>23 grip and their elbows I believe it is</p> <p>24 foreseeable that somebody could retract that</p> <p>25 QuickDraw spring.</p>
<p style="text-align: right;">190</p> <p>1 this stand, right?</p> <p>2 A. It's foreseeable that when they</p> <p>3 are pitching the top section of the</p> <p>4 treestand upward, or rotating it about the</p> <p>5 bark biter to gain the next height or next</p> <p>6 position that the angle of the treestand is</p> <p>7 such that they could retract or engage that</p> <p>8 QuickDraw spring.</p> <p>9 Q. Wait a minute. You just said --</p> <p>10 you're actually pulling it away the opposite</p> <p>11 way. You pull the yolk out first in order</p> <p>12 to disengage it when you climb. You know</p> <p>13 that, right?</p> <p>14 A. Yes.</p> <p>15 Q. So you're actually pulling it up</p> <p>16 away from it, and then lifting it. You're</p> <p>17 not pulling the trigger at that point.</p> <p>18 You're holding onto the hand so you can move</p> <p>19 it and pull that yolk out, right?</p> <p>20 A. Under normal use, yes. Consistent</p> <p>21 with --</p> <p>22 Q. And that's my question is --</p> <p>23 A. -- the use of the hand could be</p> <p>24 within that. And we don't know how every</p> <p>25 person in the world would grip or grasp that</p>	<p style="text-align: right;">192</p> <p>1 Q. Well, hold on a second. We're</p> <p>2 talking about your testing right now. You</p> <p>3 keep going back to this phrase you're saying</p> <p>4 foreseeability. We're getting to that,</p> <p>5 we're getting to why is it foreseeable</p> <p>6 because forces all work in the other</p> <p>7 direction, but we'll get to that.</p> <p>8 The first thing is that you tested</p> <p>9 how many pounds it would take to pull down,</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. In this scenario, in the scenario</p> <p>13 you're suggesting of this hypothetical thing</p> <p>14 that you agree is likely not involved in</p> <p>15 this accident, your video shows you actually</p> <p>16 pulling it back like you're pulling a</p> <p>17 trigger, right?</p> <p>18 A. Correct.</p> <p>19 Q. Now, that takes -- because it's</p> <p>20 operated at a different part of the curve on</p> <p>21 the spring that takes more force than</p> <p>22 pulling it directly down, right?</p> <p>23 A. It would take more force, yes.</p> <p>24 Q. Have you measured that force?</p> <p>25 A. I have not measured a force in</p>

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Conducted on February 7, 2024

49 (193 to 196)

<p style="text-align: right;">193</p> <p>1 that direction.</p> <p>2 Q. Do you know whether a person just</p> <p>3 normally climbing it, what type of force --</p> <p>4 have you ever measured or looked at what</p> <p>5 type forces they might be providing in their</p> <p>6 hand when they do that?</p> <p>7 A. I have not looked at grip forces</p> <p>8 of somebody's hands while they were</p> <p>9 climbing.</p> <p>10 Q. You know you -- now, I'm sure in</p> <p>11 your involvement in this case have put these</p> <p>12 on and off trees or on and off poles</p> <p>13 multiple times, right?</p> <p>14 A. Correct.</p> <p>15 Q. It's not an unintentional thing.</p> <p>16 You have to pull that trigger in order to</p> <p>17 pull it out, right?</p> <p>18 A. Yes. In the stands I've tested</p> <p>19 the QuickDraw spring is behind the cable</p> <p>20 stop and it has to be retracted in order to</p> <p>21 slide the cable stop rearward in the cable</p> <p>22 bracket.</p> <p>23 Q. Have you done any type of</p> <p>24 surrogate tests or any tests while people</p> <p>25 videoing them, normally using it about</p>	<p style="text-align: right;">195</p> <p>1 A. Okay.</p> <p>2 Q. So the gripping -- when you do</p> <p>3 that, the gripping strength of your hand is</p> <p>4 going to be pointing up toward that thumb,</p> <p>5 right?</p> <p>6 A. The -- yeah, the part of the hand</p> <p>7 that's wrapped around the upright arm would</p> <p>8 be gripping up towards the thumb.</p> <p>9 Q. So your hand can't be in that</p> <p>10 position to actually pull this -- this</p> <p>11 trigger, right?</p> <p>12 A. If the index finger is within the</p> <p>13 trigger it could be rocking the trigger</p> <p>14 backwards.</p> <p>15 Q. Rocking the trigger backwards is</p> <p>16 not going to be with enough force when it's</p> <p>17 in that hand to pull the trigger</p> <p>18 sufficiently to open that trigger and allow</p> <p>19 the cable to pass through, is it?</p> <p>20 A. That photo represents that the</p> <p>21 cable stop is positioned above the position</p> <p>22 of the retention spring. The photo</p> <p>23 represents that he is applying force to that</p> <p>24 retention spring in an effort, or in a</p> <p>25 manner that places it below the cable stop.</p>
<p style="text-align: right;">194</p> <p>1 whether they're pulling it in the direction</p> <p>2 of -- of actually pulling this trigger or</p> <p>3 the QuickDraw spring open?</p> <p>4 A. I have not done that testing.</p> <p>5 Q. The photographs that you show on</p> <p>6 paragraph 29, the way the hand is gripping</p> <p>7 is actually not in the same direction that</p> <p>8 would have to be gripped to pull that</p> <p>9 trigger, you would agree with that, right?</p> <p>10 A. The lower photo appears to show</p> <p>11 the index finger within the QuickDraw</p> <p>12 assembly in a way that could retract the</p> <p>13 QuickDraw spring from the cable stop.</p> <p>14 Q. Well, it appears from that lower</p> <p>15 figure which I've looked at this photograph</p> <p>16 and I've looked at this, and I don't -- I</p> <p>17 think you're wrong. I don't think it's</p> <p>18 inside it, but I'm just going to go with</p> <p>19 that you say it's inside.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. He's got his thumb on the</p> <p>22 top of the cable bracket, right?</p> <p>23 A. Okay.</p> <p>24 Q. The meat of his thumb is placed on</p> <p>25 the top of that, right?</p>	<p style="text-align: right;">196</p> <p>1 Q. I guess I can't see that. And</p> <p>2 I've looked at this video, I've looked at</p> <p>3 your -- I don't see that in any way it</p> <p>4 suggests that. Have you done measurements</p> <p>5 or testing to show that this can happen</p> <p>6 during ordinary use?</p> <p>7 A. I have produced that during</p> <p>8 testing that one could grip and retract that</p> <p>9 spring. I don't know if it's represented in</p> <p>10 the photos or video.</p> <p>11 Q. Well, do you have any photographs</p> <p>12 or video of you showing that you're climbing</p> <p>13 a tree and you are able to -- while climbing</p> <p>14 a tree and repositioning the upper portion,</p> <p>15 you're able to inadvertently come in contact</p> <p>16 and pull this trigger in a way that will</p> <p>17 open that QuickDraw spring?</p> <p>18 A. I do not have photos or video that</p> <p>19 show the inside of the stand positioning the</p> <p>20 upper section and my hand grasping and</p> <p>21 disengaging the QuickDraw spring.</p> <p>22 Q. So this hypothetical scenario,</p> <p>23 this theoretical scenario that you now agree</p> <p>24 is not likely the cause of this accident you</p> <p>25 haven't been able to replicate on any tree,</p>

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Conducted on February 7, 2024

50 (197 to 200)

<p style="text-align: right;">197</p> <p>1 true?</p> <p>2 A. I have been able to replicate it.</p> <p>3 I don't know if I have photographic evidence</p> <p>4 of that replication.</p> <p>5 Q. You've been able replicate while</p> <p>6 climbing in a tree?</p> <p>7 A. Not while climbing in the tree,</p> <p>8 excuse me.</p> <p>9 Q. That's my question. While using</p> <p>10 this stand in the intended manner, have you</p> <p>11 been able to replicate that hypothetical</p> <p>12 situation that you now agree is not likely</p> <p>13 the cause of this accident?</p> <p>14 A. Not while climbing a tree.</p> <p>15 Q. Okay. Do you have any criticisms</p> <p>16 of the selection of the cable itself?</p> <p>17 A. I do not believe I do.</p> <p>18 MR. SUTTON: I think I broke my</p> <p>19 promise. I think I've gone over an hour.</p> <p>20 So we can go off the record.</p> <p>21 - - -</p> <p>22 (Recess.)</p> <p>23 - - -</p> <p>24 BY MR. SUTTON:</p> <p>25 Q. All right. So we're back on the</p>	<p style="text-align: right;">199</p> <p>1 what, two Mini Vipers in 2002?</p> <p>2 A. I believe it was a Mini Viper and</p> <p>3 a Viper XLS, but yeah.</p> <p>4 Q. Were they arm climbers or hand</p> <p>5 climbers or did they have -- were they</p> <p>6 sit-and-stand climbers?</p> <p>7 A. They were sit-and-stand climbers,</p> <p>8 and both did have the hatch cover for the</p> <p>9 safety cover.</p> <p>10 Q. The hatch covers were as designed,</p> <p>11 if I recall, an aluminum or steel design</p> <p>12 that would open up, you put bracket or the</p> <p>13 cable in the bracket and then you close the</p> <p>14 hatch cover; is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. That required a user to properly</p> <p>17 close the hatch cover in order to have that</p> <p>18 guard to be effective, right?</p> <p>19 A. The user would have to manually</p> <p>20 open and manually close that to block the</p> <p>21 open keyway, correct.</p> <p>22 Q. So that's an additional step in</p> <p>23 trying to put this onto the tree, right?</p> <p>24 A. It would be an additional step,</p> <p>25 yes.</p>
<p style="text-align: right;">198</p> <p>1 record. It appeared to me from your review</p> <p>2 of the report that you didn't really have</p> <p>3 any particular criticisms of the cable</p> <p>4 bracket design itself. You thought that</p> <p>5 there should be an additional guard, but as</p> <p>6 far as the bracket itself you didn't have</p> <p>7 criticisms; is that fair to say?</p> <p>8 A. That's fair to say.</p> <p>9 Q. In the QuickDraw spring I know</p> <p>10 that you thought there should be additional</p> <p>11 items on it, but I didn't see any criticisms</p> <p>12 of the design of the QuickDraw spring; is</p> <p>13 that true?</p> <p>14 A. Of the design of the spring itself</p> <p>15 no criticisms. Of a safety interlock or a</p> <p>16 safety device I have criticisms that I</p> <p>17 express in the conclusions in my report.</p> <p>18 Q. And I guess maybe that was an</p> <p>19 inartful question but my question really is:</p> <p>20 The material selection, the curvature, those</p> <p>21 type of things, you don't have any design</p> <p>22 opinions relating to it, right?</p> <p>23 A. I do not, no.</p> <p>24 Q. You talked a little bit about the</p> <p>25 hatch cover design. You previously had,</p>	<p style="text-align: right;">200</p> <p>1 Q. Now, in addition to that, when it</p> <p>2 was open in an open position it had the</p> <p>3 ability to become entangled or catch on</p> <p>4 other things, whether that was in transport</p> <p>5 or otherwise, right?</p> <p>6 A. It could. And the way it pivoted</p> <p>7 out it was exposed in a manner that, you</p> <p>8 know, could be caught on other things. It</p> <p>9 also in an open manner would serve</p> <p>10 potentially the visual indicator to the</p> <p>11 operator that that hatch cover was open and</p> <p>12 not positioned over the keyway.</p> <p>13 Q. It could be damaged if it was --</p> <p>14 if the treestand was dropped, caught on</p> <p>15 something, et cetera, bent out of shape,</p> <p>16 true?</p> <p>17 A. Yeah. Similar to any other metal</p> <p>18 component on the stand.</p> <p>19 Q. If a hatch cover is bent out of</p> <p>20 shape, that can prevent it from closing and</p> <p>21 being able to work and provide its function,</p> <p>22 true?</p> <p>23 A. It could make it more difficult to</p> <p>24 close. They have a slight springiness to</p> <p>25 them which allows you to kind of reform them</p>

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Conducted on February 7, 2024

51 (201 to 204)

<p style="text-align: right;">201</p> <p>1 back to the shape of cable bracket, but if</p> <p>2 permanently damaged, then, yes, it would be</p> <p>3 difficult to close.</p> <p>4 Q. From time to time did you have</p> <p>5 to -- have to apply pressure or load to get</p> <p>6 them to go back into the original shape?</p> <p>7 A. I don't recall specifically having</p> <p>8 to reshape them. Oftentimes, you would</p> <p>9 sometimes have to require additional force</p> <p>10 to close them back over the cable bracket.</p> <p>11 Q. Because they would become</p> <p>12 squishy --</p> <p>13 A. If they became pinched.</p> <p>14 Q. Okay. Got it. If they became</p> <p>15 slightly loose then they could open further</p> <p>16 while you were climbing, right?</p> <p>17 A. Potentially, yes.</p> <p>18 Q. And that could lead to a danger,</p> <p>19 right?</p> <p>20 A. It could lead to an open or</p> <p>21 exposed keyway.</p> <p>22 Q. Now, if you turn to Exhibit 5,</p> <p>23 which is the treestand instructions, and</p> <p>24 specifically to page 6. Let me know when</p> <p>25 you're there.</p>	<p style="text-align: right;">203</p> <p>1 Q. Incidentally, how far apart are</p> <p>2 cable bolts or the cable nuts, cable stops?</p> <p>3 A. The drawing indicates that they're</p> <p>4 spaced four inches on center on each end.</p> <p>5 Four and a half inches from the end.</p> <p>6 Q. And did you make any determination</p> <p>7 as to how close the QuickDraw spring can</p> <p>8 come toward any part of the tree itself in</p> <p>9 this design? Do you know what I mean?</p> <p>10 A. How close the QuickDraw spring can</p> <p>11 come to the tree? I'm not following.</p> <p>12 Q. In other words, a cable that goes</p> <p>13 around goes over the QuickDraw spring and</p> <p>14 then it goes around the tree and connects</p> <p>15 back into the cable bracket, right?</p> <p>16 A. Correct.</p> <p>17 Q. And there is a distance when it's</p> <p>18 installed into a tree between that QuickDraw</p> <p>19 spring or the cable nut if you push it</p> <p>20 against the QuickDraw spring and the side of</p> <p>21 the tree when it first touches the tree that</p> <p>22 goes around.</p> <p>23 A. Okay.</p> <p>24 Q. The cable has to touch the tree,</p> <p>25 right?</p>
<p style="text-align: right;">202</p> <p>1 A. I'm there.</p> <p>2 Q. This is the page that talks and</p> <p>3 tells the user how to use this product,</p> <p>4 right?</p> <p>5 A. The title at the top of the page</p> <p>6 describes and provides the instructions for</p> <p>7 attachment to the tree.</p> <p>8 Q. Fair enough. And then it goes on,</p> <p>9 and in a series of numbered paragraphs and a</p> <p>10 series of figures which are photographs</p> <p>11 shows the user how to put the cable in the</p> <p>12 cable bracket, right?</p> <p>13 A. It does, yes.</p> <p>14 Q. And what it shows is that the user</p> <p>15 pulls down on the QuickDraw spring, true?</p> <p>16 A. Yes, it shows that in figure 3.</p> <p>17 Q. Inserts the cable, right?</p> <p>18 A. Inserts the cable in No. 4, yes.</p> <p>19 Q. And as shown in No. 4 you have to</p> <p>20 bend the cable to get it into the cable</p> <p>21 bracket, right?</p> <p>22 A. It shows some arc in the cable in</p> <p>23 order to insert it into the tube of the</p> <p>24 upper right arm and navigate around the</p> <p>25 opening in the keyway.</p>	<p style="text-align: right;">204</p> <p>1 A. Sure.</p> <p>2 Q. And did you make determination as</p> <p>3 to what those variable lengths were?</p> <p>4 A. Under what circumstance?</p> <p>5 Q. When you place in a tree, load it</p> <p>6 into a tree?</p> <p>7 A. I did not measure that specific</p> <p>8 distance, no.</p> <p>9 Q. So, in any event, this talks about</p> <p>10 proper insertion and it says on the warning</p> <p>11 label, "If the QuickDraw cable spring does</p> <p>12 not lock into place behind the cable stop as</p> <p>13 shown in figure 7, do not use the treestand</p> <p>14 since the cable is not secured and may</p> <p>15 result in the user to fall. Contact Summit</p> <p>16 to obtain the proper corrective action." Do</p> <p>17 you see that?</p> <p>18 A. I do.</p> <p>19 Q. You see figure 7 shows the cable</p> <p>20 so that the cable stop is in front of the</p> <p>21 spring, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And then what that's</p> <p>24 showing is -- is showing the user is to make</p> <p>25 sure that you confirm that that's the</p>

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Conducted on February 7, 2024

52 (205 to 208)

<p style="text-align: right;">205</p> <p>1 location of the cable in front of the spring 2 like that, fully inserted in the cable 3 bracket when you install this into the tree? 4 A. From the side view of the stand, 5 yes. 6 Q. Well, the video also shows Summit 7 folks installing it from the side as well, 8 are you aware of that? 9 A. I'd believe it if you told me. I 10 don't know one way or the other. 11 Q. And from looking at the side view 12 you would agree with me that it is very easy 13 to discern whether or not that cable is 14 properly in the cable bracket, true? 15 A. From this side view and the 16 closeup photograph and the lighting 17 conditions, yes. 18 Q. So what -- you threw out a last 19 part, and I'll get to that in a second. But 20 you agree with me that a person looking at 21 this at the side can easily determine 22 whether the cable has been appropriately and 23 properly installed in the cable assembly? 24 A. From a closeup view represented in 25 figure 7, yes. From a position represented</p>	<p style="text-align: right;">207</p> <p>1 A. (No audible response.) 2 Q. What are they called again? I'm 3 really am having a brain freeze. 4 A. Head lamp. 5 Q. Head lamp, I'm sorry. Head lamp. 6 You ever use head lamps? 7 A. I do. 8 Q. How about flashlights, you ever 9 use flashlights? 10 A. Typically not during any climbing, 11 or -- yeah, any climbing activity I prefer 12 hands free or a head lamp. 13 Q. In any event, they shed light on 14 it. So if you're in an early morning, late 15 night application -- well, you shouldn't be 16 using this at night, so you should be taking 17 it off the tree at night. But if you're in 18 the early morning you can use a light, and 19 most hunters do, to see whether if this is 20 appropriately put on the tree? 21 A. Many hunters do use headlamps. I 22 believe Mr. Vandine testified that did not. 23 Q. Well, he said he didn't use a 24 flashlight. But most people also carry a 25 phone and phones have flashlights on them.</p>
<p style="text-align: right;">206</p> <p>1 in figure 8, it becomes a lot more difficult 2 to determine if QuickDraw spring is 3 positioned behind the cable stop. 4 Q. Well, first of all, you can't see 5 in figure 8 that it's -- that it's installed 6 in front of the cable -- the cable stop is 7 installed in front of the QuickDraw spring? 8 A. It appears to be, however tree 9 obscures much of the -- or the back obscures 10 the background and it is difficult to see 11 the cable stop from that angle. 12 Q. Sure, because the person that took 13 the photograph is standing several feet 14 away. But a user that puts this on a tree 15 is standing right up next to it because they 16 have to be able to hold it, right? 17 A. They would be standing potentially 18 closer than what is shown in figure 8. 19 Q. And as shown in these figures 3 20 through 7 it's really easy to just look to 21 see if it's connected correctly, right? 22 A. From the side it becomes easier to 23 determine that, yes. 24 Q. Now, what are those things that 25 put on your head that shoot light out of?</p>	<p style="text-align: right;">208</p> <p>1 All they have to do is take an extra couple 2 of seconds and flash that flashlight to see 3 whether or not it's appropriately attached, 4 right? 5 A. If they use the light from their 6 phone, they could more easily discern 7 whether it's properly attached. 8 Q. But you agree with me that if 9 you're standing on the side of the stand and 10 you're looking at it from the point of view 11 that's shown in these photographs, it's 12 really easy to determine whether or not the 13 cable has been appropriately and properly 14 inserted into the cable bracket? 15 A. If you were as close as figure No. 16 7, yes. 17 Q. Well, I mean even as close as 18 figure No. 6, right? 19 A. I would agree it with that, given 20 the white background that we see here. 21 Q. And even as close as figure No. 8 22 you could see the top -- the right side 23 cable bracket. You can easily see that 24 attachment, right? 25 A. Against the white background of</p>

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Transcript of Jarrett Waters
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53 (209 to 212)

<p style="text-align: right;">209</p> <p>1 the photo, yes.</p> <p>2 Q. And you said you have a problem</p> <p>3 because the photograph shows the left</p> <p>4 bracket in front of the tree, but you can</p> <p>5 just kind of move around the side of the</p> <p>6 tree a little bit and get a better view and</p> <p>7 make sure you can see that that cable</p> <p>8 bracket is appropriately installed, right?</p> <p>9 A. The operator could change their</p> <p>10 position to change their viewing angle. I</p> <p>11 don't think they're ever going to see a</p> <p>12 white background like in figure 8 unless</p> <p>13 it's a snowstorm, but they do have the</p> <p>14 ability to move alongside of the tree to</p> <p>15 better inspect that cable assembly.</p> <p>16 Q. And you agree that a user, prior</p> <p>17 to using a climbing treestand, should take</p> <p>18 the time to check to make sure they have</p> <p>19 properly installed the climbing treestand to</p> <p>20 the tree, true?</p> <p>21 A. Yeah. During the installation to</p> <p>22 the tree and prior to climbing it would be</p> <p>23 good practice to inspect that the cable is</p> <p>24 fully seated within the cable bracket.</p> <p>25 Q. So you agree that the user should</p>	<p style="text-align: right;">211</p> <p>1 A. This instruction manual does</p> <p>2 outline how to do that, yes.</p> <p>3 Q. And provide samples that a user</p> <p>4 can compare against and make that their</p> <p>5 product is installed on the tree, right?</p> <p>6 A. Provided they have the instruction</p> <p>7 manual with them at the tree.</p> <p>8 Q. Or if they wanted to prepare it or</p> <p>9 they could just look it at, memorize it and</p> <p>10 realize what it's supposed to look like</p> <p>11 because it's easy to see on the side of the</p> <p>12 stand when you look at it sideways, right?</p> <p>13 A. If they were to memorize all these</p> <p>14 figures, yes, they could deduce that.</p> <p>15 Q. Now, I don't have of way of</p> <p>16 marking your video that you did, and I don't</p> <p>17 know if it's easier for you to pull up, and</p> <p>18 I can give you -- I feel that it is not,</p> <p>19 because mine is installed in a Cloud, and</p> <p>20 so -- right now I'm not at 000, but it's</p> <p>21 saying I'm at 000. So I don't think I'm</p> <p>22 going to be to do it. So I'm going to show</p> <p>23 you my video here.</p> <p>24 A. Okay.</p> <p>25 Q. The video just shows, it appears</p>
<p style="text-align: right;">210</p> <p>1 do that, right?</p> <p>2 A. Yes, the user should do that.</p> <p>3 Q. And that's true of the designs</p> <p>4 you've drawn up in the CAD drawings that</p> <p>5 Summit designed and any other climbing</p> <p>6 treestand, right?</p> <p>7 A. The user should inspect that the</p> <p>8 cable bracket or cable is fully secured in</p> <p>9 one way or another.</p> <p>10 Q. And you would agree that</p> <p>11 especially concerning inherent risks that</p> <p>12 are used -- strike that.</p> <p>13 Especially considering the</p> <p>14 inherent risks in using a climbing</p> <p>15 treestand, you would agree that the user</p> <p>16 should take the appropriate amount of time</p> <p>17 to ensure that their stand is properly</p> <p>18 attached to the tree, true?</p> <p>19 A. They should inspect it, in a way</p> <p>20 that confirms to them that the stand is</p> <p>21 appropriately attached to the tree.</p> <p>22 Q. And these instruction manuals,</p> <p>23 this instruction that's set forth on page 6</p> <p>24 clearly show the user how to do that, with</p> <p>25 this product, right?</p>	<p style="text-align: right;">212</p> <p>1 to be your hand, right?</p> <p>2 A. That is correct.</p> <p>3 Q. And you're standing on the left</p> <p>4 side of the treestand, right?</p> <p>5 A. Correct.</p> <p>6 Q. Using your right hand, right?</p> <p>7 A. Correct.</p> <p>8 Q. So the right hand, when you're</p> <p>9 using this stand, doesn't interact with that</p> <p>10 left arm, right?</p> <p>11 A. During the climbing of the</p> <p>12 treestand?</p> <p>13 Q. Yes.</p> <p>14 A. Yes. Your right hand would likely</p> <p>15 be on the right upright.</p> <p>16 Q. So in any event, you can see --</p> <p>17 now I can't see, but your hand is holding</p> <p>18 onto the arm of the climbing bracket, right?</p> <p>19 A. Correct.</p> <p>20 Q. It's also got a finger that's</p> <p>21 several -- one or two inches away from the</p> <p>22 other fingers through the trigger assembly,</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. And by having it one or two inches</p>

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Conducted on February 7, 2024

54 (213 to 216)

213	<p>1 away, that gives you the ability to put the</p> <p>2 force on it that opens this up, right?</p> <p>3 A. I likely could apply that force</p> <p>4 should my hands have been closer to the</p> <p>5 trigger, but in this video that is what it</p> <p>6 represents, yes.</p> <p>7 Q. Did you try to do that? In other</p> <p>8 words, did you do a video where you didn't</p> <p>9 apply it with your hand turning it a</p> <p>10 different direction than it normally just</p> <p>11 using this product as shown in your video?</p> <p>12 A. I did not record any of those</p> <p>13 trials.</p> <p>14 Q. That wasn't my question, though.</p> <p>15 Did you actually do it?</p> <p>16 A. I believe I actuated the stand</p> <p>17 with my hand in a closer grip through some</p> <p>18 of my testing, however it is not documented</p> <p>19 likely through photograph or video.</p> <p>20 Q. Okay. Now, I'd appreciate it if</p> <p>21 you excuse the fact that this is in a Cloud,</p> <p>22 sometimes they get fuzzy but here -- there</p> <p>23 are two photographs. There is one</p> <p>24 photograph that I will represent to you that</p> <p>25 you produced of this test, which has the</p>	215	<p>1 Q. Okay. That was just kind of a</p> <p>2 prefatory question to the next one. So it</p> <p>3 appears to me that in this -- this set up</p> <p>4 that you've set this up against a tree,</p> <p>5 you've actually taken the cable assembly and</p> <p>6 set it up higher than it would normally go.</p> <p>7 In other words, there is a bend in</p> <p>8 that cable assembly so that it goes up to</p> <p>9 where it's nailed to the tree. Do see that?</p> <p>10 A. I do see that.</p> <p>11 Q. Is there a reason you did that?</p> <p>12 A. This photograph was taken after</p> <p>13 that video was recorded, I believe, and the</p> <p>14 treestand may have moved or slid down the</p> <p>15 utility pole post testing.</p> <p>16 Q. Well, let's talk about that for a</p> <p>17 second. Because you see the same</p> <p>18 photograph.</p> <p>19 A. I made an attempt to level the</p> <p>20 stand prior to the initiation of that test.</p> <p>21 Q. The other one, which is the other</p> <p>22 photograph, that also shows it at a higher</p> <p>23 level like that, correct?</p> <p>24 A. Correct.</p> <p>25 Q. So the video shows that the cable</p>
214	<p>1 nails in the back, I think you said screws?</p> <p>2 A. They are, yes.</p> <p>3 Q. There's screws in the back, and</p> <p>4 then there's one photograph that doesn't,</p> <p>5 right?</p> <p>6 A. Of the recently produced, the two</p> <p>7 photographs in the video?</p> <p>8 Q. Yes.</p> <p>9 A. I think both include the screws.</p> <p>10 Q. That's the second photograph. I</p> <p>11 don't see the screws in it.</p> <p>12 A. May I zoom in on that?</p> <p>13 Q. Yeah. Let me do it for you</p> <p>14 because it's easier.</p> <p>15 MR. DARIA: Can you probably see</p> <p>16 here.</p> <p>17 BY MR. SUTTON:</p> <p>18 Q. You and Counsel can look at it</p> <p>19 yourself if you want to.</p> <p>20 A. I believe I can see the head of</p> <p>21 one of those screws in that photograph along</p> <p>22 the top. But the screws are -- the screws</p> <p>23 are attaching that cable to that pole in</p> <p>24 that photo. Whether you can see them or not</p> <p>25 due to the angle of the photo, they are.</p>	216	<p>1 seems to be at a higher level than it</p> <p>2 normally would be as well. Was that done</p> <p>3 intentionally to make it easier to come out</p> <p>4 of the stand?</p> <p>5 A. No. The stand was positioned</p> <p>6 level first on the tree and then I adhered</p> <p>7 or affixed the cable to the tree.</p> <p>8 Q. If I --</p> <p>9 A. The cable was in its natural state</p> <p>10 as it was connected into the cable bracket</p> <p>11 when I secured it to the tree.</p> <p>12 Q. And if I understood this test that</p> <p>13 you did, the upper portion of the treestand</p> <p>14 was attached at the bottom part to the tree</p> <p>15 to the yolk, right?</p> <p>16 A. That's correct.</p> <p>17 Q. These products work on a process</p> <p>18 of cantilever force, right?</p> <p>19 A. Sure.</p> <p>20 Q. So there's an equal and opposite</p> <p>21 reaction, and as pulls against the back of</p> <p>22 the tree it pushes on the front of the tree</p> <p>23 at the yolk, right?</p> <p>24 A. Yes.</p> <p>25 Q. And I can get more in-depth than</p>

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55 (217 to 220)

<p style="text-align: right;">217</p> <p>1 that, I'm just trying to get to the next</p> <p>2 question.</p> <p>3 In any event, it appears that in</p> <p>4 your testing what you did was simply rotate</p> <p>5 the furthestmost point of the treestand up</p> <p>6 towards the tree, you didn't actually move</p> <p>7 the yolk; is that true?</p> <p>8 A. I'd have had to watch the video.</p> <p>9 The yolk may not disconnect from the tree</p> <p>10 given how I was -- from the side of it.</p> <p>11 Q. I'm not sure we can watch it</p> <p>12 together, but I'm going to try, because when</p> <p>13 you get in a bigger firm they put in these</p> <p>14 things to make it hard to see the from side</p> <p>15 so nobody can read over your shoulder.</p> <p>16 A. Play it one time for me, please.</p> <p>17 Q. Of course.</p> <p>18 A. Yeah, the yolk was not</p> <p>19 disconnected from the tree at the time that</p> <p>20 testing was done.</p> <p>21 Q. And so that testing was not a</p> <p>22 normal movement of the treestand if you were</p> <p>23 just moving it up or down the tree, because</p> <p>24 you would -- the first thing you'd do, is</p> <p>25 you remove the yolk and then you move it up,</p>	<p style="text-align: right;">219</p> <p>1 inchworm up the tree.</p> <p>2 Q. Well, nobody is dragging the yolk</p> <p>3 and then the yolk has to come off the tree</p> <p>4 to move it, right?</p> <p>5 A. It has to come off eventually.</p> <p>6 Q. That's my point is that your</p> <p>7 testing isn't the actual movement part</p> <p>8 because you haven't taken the yolk off,</p> <p>9 you're just pivoting the climbing stand,</p> <p>10 right?</p> <p>11 A. I am pivoting the climbing stand</p> <p>12 which is a foreseeable action that somebody</p> <p>13 may do in the field.</p> <p>14 Q. Since we're going to use the word</p> <p>15 "foreseeable," which you like to use, how</p> <p>16 foreseeable is it that the cable is nailed</p> <p>17 to the back of the tree?</p> <p>18 A. It is unlikely that the cable</p> <p>19 would be nailed to the back of the tree;</p> <p>20 however, it is foreseeable that the cable</p> <p>21 may encounter obstructions, whether it be</p> <p>22 limbs or potential bark that may create a</p> <p>23 snag or prevent its free motion behind the</p> <p>24 tree.</p> <p>25 Q. Well, one of the things that the</p>
<p style="text-align: right;">218</p> <p>1 right?</p> <p>2 A. I think it's a foreseeable</p> <p>3 movement. Some individuals may rotate about</p> <p>4 the yolk, to push the cable away from the</p> <p>5 tree before sliding the platform up the</p> <p>6 tree.</p> <p>7 Q. Well -- and you use these stands,</p> <p>8 the yolk actually digs into the tree a bit,</p> <p>9 right?</p> <p>10 A. To some degree, depending on the</p> <p>11 tree.</p> <p>12 Q. So you have to pull the yolk back</p> <p>13 to get it to move, right?</p> <p>14 A. You can still rotate about the</p> <p>15 yolk as a fulcrum point or a pivot point.</p> <p>16 Q. In any event, you would agree that</p> <p>17 because the product yolk does not come off</p> <p>18 the tree this is not a normal movement to</p> <p>19 reposition the stand, if you were just</p> <p>20 moving the stand up, which requires you to</p> <p>21 move the yolk, remove the yolk and</p> <p>22 disconnect it from the tree?</p> <p>23 A. I think it's a foreseeable</p> <p>24 movement and we don't know how everybody</p> <p>25 utilizes the treestand and moves it as they</p>	<p style="text-align: right;">220</p> <p>1 instruction manuals talk about, in fact, all</p> <p>2 the instructions for climbing treestands</p> <p>3 talk about is to not use climbing stands on</p> <p>4 trees that have obstructions like limbs to</p> <p>5 go up them, right?</p> <p>6 A. (No audible response.)</p> <p>7 Q. Did you get that question?</p> <p>8 A. I did. I apologize for the delay.</p> <p>9 I'm looking through the warnings for a</p> <p>10 specific line.</p> <p>11 The warning states, "On trees that</p> <p>12 have an obstruction that may limit</p> <p>13 treestands use." So it would be up to the</p> <p>14 user interpret whether that is obstruction</p> <p>15 is something that limited their use.</p> <p>16 Q. Well, if it interferes in the</p> <p>17 movement of the upper portion of the</p> <p>18 standard cable that would limit the use,</p> <p>19 wouldn't it?</p> <p>20 A. If it's a one-off obstruction it</p> <p>21 may be something that they could work</p> <p>22 around.</p> <p>23 Q. In other words, they could saw it</p> <p>24 off? They could cut off or saw off --</p> <p>25 A. Right. A small limb that could be</p>

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56 (221 to 224)

<p style="text-align: right;">221</p> <p>1 flexed out of the way as they go up above</p> <p>2 it.</p> <p>3 Q. On the backside of the tree where</p> <p>4 the cable goes?</p> <p>5 A. Anywhere along the trunk of the</p> <p>6 tree you can encounter a small flexible limb</p> <p>7 or a vine or some obstacle that could</p> <p>8 potentially be deflected out of the way.</p> <p>9 Q. You're suggesting that while</p> <p>10 climbing in a climbing treestand -- the</p> <p>11 cable only touches the tree at the back of</p> <p>12 the tree, right?</p> <p>13 A. It can interface with the sides of</p> <p>14 the tree as well, yeah.</p> <p>15 Q. You're suggesting that while</p> <p>16 holding it a person should use that, work up</p> <p>17 and then try to twist that off like if it's</p> <p>18 on the back of the tree or something?</p> <p>19 A. I'm not suggesting that they</p> <p>20 remove the obstacle. I was suggesting that</p> <p>21 if there's a one-off obstacle they may move</p> <p>22 around it.</p> <p>23 Q. But you've done no testing on any</p> <p>24 type of objects on a tree to determine</p> <p>25 whether or not they have any sufficient</p>	<p style="text-align: right;">223</p> <p>1 this product; that's how it is designed to</p> <p>2 be used. In other words, it's designed so</p> <p>3 that if you pull the spring you can move the</p> <p>4 cable out of the bracket because that's how</p> <p>5 you remove it, right?</p> <p>6 A. That's how it's designed, yes.</p> <p>7 Q. Okay. But when you did that and</p> <p>8 you pushed the cable bracket up high enough</p> <p>9 so that the cable went past the spring, it</p> <p>10 didn't come out of the stand, true?</p> <p>11 A. It did require the second</p> <p>12 actuation of the QuickDraw spring to lift</p> <p>13 it. If it would have driven forward there</p> <p>14 was a chance it could have partially caught</p> <p>15 on the exposed keyway at that point.</p> <p>16 Q. My point is that the actual design</p> <p>17 of the cable bracket itself in your test and</p> <p>18 the cable system in your test, showed that</p> <p>19 even when you pulled that spring,</p> <p>20 intentionally bypassing it, and moved the</p> <p>21 platform forward to -- so the cable would</p> <p>22 back out from the area it was in front of</p> <p>23 the spring, it still wouldn't come out of</p> <p>24 the cable bracket, true?</p> <p>25 A. At that moment in time, no. The</p>
<p style="text-align: right;">222</p> <p>1 force to even do what you did in this video</p> <p>2 in real life?</p> <p>3 A. I think there's many different</p> <p>4 obstructions that present themselves in</p> <p>5 trees. Yes, there are no screws found in</p> <p>6 trees that would be attached to the cable</p> <p>7 post installation.</p> <p>8 Q. My question is: Did you test it?</p> <p>9 Did you do any testing whatsoever to</p> <p>10 determine the type of force that you could</p> <p>11 deduce on the cable or cable bracket on any</p> <p>12 actual feature of a tree?</p> <p>13 A. No, I did not.</p> <p>14 Q. Now, it appears to me that when</p> <p>15 you did this test, you pulled the trigger</p> <p>16 down and tilted the cable bracket toward the</p> <p>17 tree, right?</p> <p>18 A. Correct.</p> <p>19 Q. Then as you did that, the cable</p> <p>20 moved axially because you've now</p> <p>21 intentionally bypassed the QuickDraw spring,</p> <p>22 right?</p> <p>23 A. In that test I bypassed the</p> <p>24 QuickDraw spring by retracting it, yes.</p> <p>25 Q. And that's the intentional use of</p>	<p style="text-align: right;">224</p> <p>1 stand has to be lowered back.</p> <p>2 Q. Well -- and your test required you</p> <p>3 to make now, a second movement at which you</p> <p>4 change the position of your hand --</p> <p>5 A. Reengaging the QuickDraw spring to</p> <p>6 drive it upwards, yes.</p> <p>7 Q. -- to now, move your hand so that</p> <p>8 now, two fingers were over on the outside of</p> <p>9 trigger. So you have to take your finger</p> <p>10 out of the trigger assembly, then move it to</p> <p>11 the other side with two fingers now, pushed</p> <p>12 it up, so that you can now physically use</p> <p>13 that spring to push the cable out of the</p> <p>14 cable bracket, right?</p> <p>15 A. That test shows that, yes.</p> <p>16 Q. Were you ever able to do a test</p> <p>17 where you didn't have to do that step?</p> <p>18 A. If I didn't do that step there</p> <p>19 were tests where the cable stop would engage</p> <p>20 or partial engage the keyway at the top of</p> <p>21 the cable bracket.</p> <p>22 Q. Where are the videos of those</p> <p>23 tests?</p> <p>24 A. I don't have videos of those</p> <p>25 specific tests.</p>

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57 (225 to 228)

<p style="text-align: right;">225</p> <p>1 Q. So if you didn't do this</p> <p>2 intentionally change your grip, take your</p> <p>3 finger out of the trigger assembly, put it</p> <p>4 on the outside and then push it up, you</p> <p>5 could not get the cable to just come out of</p> <p>6 the cable bracket, fair?</p> <p>7 A. It would not fully exit the cable</p> <p>8 bracket but it did partially engage the</p> <p>9 keyway in that perched position that we</p> <p>10 referenced earlier.</p> <p>11 Q. On inside, or the lower side of</p> <p>12 it?</p> <p>13 A. I would say mid side, midline.</p> <p>14 Q. Did you move it from there, to</p> <p>15 determine what would happen if you moved the</p> <p>16 stand?</p> <p>17 A. If I applied load on the stand</p> <p>18 from there it would temporarily hold from</p> <p>19 that position.</p> <p>20 Q. Until it -- until you moved the</p> <p>21 stand one way or the other to move it out of</p> <p>22 that position; is that right?</p> <p>23 A. Correct.</p> <p>24 Q. So one of the things you came up</p> <p>25 with this hypothesis that we talked about,</p>	<p style="text-align: right;">227</p> <p>1 and the cable assembly is still by its</p> <p>2 design of both the cable bracket and the</p> <p>3 cable itself staying in that channel of the</p> <p>4 cable bracket, right?</p> <p>5 A. The cable stop has the ability to</p> <p>6 sit on the face of the keyway --</p> <p>7 Q. We haven't gotten there yet.</p> <p>8 A. Okay.</p> <p>9 Q. At this point in time it's still</p> <p>10 in that channel, right? You haven't pulled</p> <p>11 it back, you just moved it forward?</p> <p>12 A. Okay. Yes.</p> <p>13 Q. Then when you pull it back, it</p> <p>14 doesn't just come out is what you found,</p> <p>15 right?</p> <p>16 A. It could engage the keyway, yes.</p> <p>17 Q. It could go right back to where it</p> <p>18 was normally, that's one of the things that</p> <p>19 could happen, right?</p> <p>20 A. That's correct.</p> <p>21 Q. Or it could potentially engage the</p> <p>22 opening of what I think Mr. Woller called</p> <p>23 the neck of that keyway?</p> <p>24 A. Yes. The narrowed portion of the</p> <p>25 top of the cable bracket.</p>
<p style="text-align: right;">226</p> <p>1 that doesn't likely apply to this case,</p> <p>2 would require separate and distinct</p> <p>3 movements. It would require one movement to</p> <p>4 push this to get the cable to come out and</p> <p>5 then remove the upper portion a second time,</p> <p>6 in order to get the cable to come off that</p> <p>7 perched position; is that fair?</p> <p>8 A. Please repeat.</p> <p>9 Q. Okay. So if I understood this,</p> <p>10 what you are saying is you would pull the --</p> <p>11 intentionally pull the QuickDraw trigger</p> <p>12 just like the product was designed to do,</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. Then tilt the upper portion toward</p> <p>16 the cable assembly which has been screwed to</p> <p>17 the back of the tree, right?</p> <p>18 A. Yes.</p> <p>19 Q. And because it's been screwed to</p> <p>20 the back of the tree, the cable stays the</p> <p>21 same point while you move the upper portion,</p> <p>22 right?</p> <p>23 A. That's correct.</p> <p>24 Q. So the cable stays at the same</p> <p>25 point, you've moved the upper portion back</p>	<p style="text-align: right;">228</p> <p>1 Q. And what we talked about earlier</p> <p>2 as the perched position, right?</p> <p>3 A. That's correct.</p> <p>4 Q. And then in order for it to come</p> <p>5 out any further you had to then move the</p> <p>6 climbing stand further to get it to move</p> <p>7 from that position, right?</p> <p>8 A. That would be correct.</p> <p>9 Q. And there is nothing in the</p> <p>10 testimony of Mr. Vandine that suggests he</p> <p>11 did that, right?</p> <p>12 A. There is nothing in his testimony</p> <p>13 that talks about the actuation of those</p> <p>14 QuickDraw springs when he went to reload or</p> <p>15 test the cable stop and the bracket.</p> <p>16 Q. And there is also nothing in it</p> <p>17 that suggested that -- strike that. That's</p> <p>18 an important point I want to get back to.</p> <p>19 When he is attaching the cable</p> <p>20 bracket on it, he's doing it while he's at</p> <p>21 height, right?</p> <p>22 A. Yes.</p> <p>23 Q. That requires him to stand on the</p> <p>24 platform without a harness, right?</p> <p>25 A. He can do it with or without a</p>

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58 (229 to 232)

<p style="text-align: right;">229</p> <p>1 harness. He's standing on the platform.</p> <p>2 Q. But he had no harness on?</p> <p>3 A. Yes.</p> <p>4 Q. And he has to keep the upper</p> <p>5 portion of the tree stand controlled, right?</p> <p>6 A. Yes.</p> <p>7 Q. So he describes this process where</p> <p>8 he's partially holding the treestand against</p> <p>9 the tree with his body, right?</p> <p>10 A. Yes.</p> <p>11 Q. And he's reaching around the tree</p> <p>12 with one hand to try to put it in, and then</p> <p>13 trying to put it in the other side with his</p> <p>14 other hand, right?</p> <p>15 A. Correct.</p> <p>16 Q. And in order to hold it up against</p> <p>17 the tree, he's got to be close to the tree,</p> <p>18 right? Because he's got to be touching the</p> <p>19 physical outer rim and he's got to be within</p> <p>20 a few inches away from the tree, right?</p> <p>21 A. Yes.</p> <p>22 Q. And as he does it difficult, if</p> <p>23 would be difficult of not impossible for him</p> <p>24 to really see that connection point, right?</p> <p>25 A. It would be difficult to see that</p>	<p style="text-align: right;">231</p> <p>1 A. Okay.</p> <p>2 Q. -- your testing shows it would</p> <p>3 have at worst only got to a point where it</p> <p>4 stuck on the -- on that neck or the perch</p> <p>5 position?</p> <p>6 A. Yeah, it could have become in a</p> <p>7 partially installed state.</p> <p>8 Q. And then in order for it to come</p> <p>9 out you said you -- they had to move it</p> <p>10 again, right?</p> <p>11 A. It had to be reloaded. Whether it</p> <p>12 moved or load was applied, disengaged and</p> <p>13 reapplied it would have had to have been</p> <p>14 reloaded.</p> <p>15 Q. Now, we talked earlier about the</p> <p>16 fact that removing the cable from a climbing</p> <p>17 treestand, while at height, it's danger,</p> <p>18 right?</p> <p>19 A. It induces a -- additional risk,</p> <p>20 yes.</p> <p>21 Q. Let's not beat around the bush, by</p> <p>22 that you mean it's dangerous, right?</p> <p>23 A. It -- it increases the risk.</p> <p>24 Q. Of a product that already has the</p> <p>25 inherent danger of falling to your death or</p>
<p style="text-align: right;">230</p> <p>1 connection point, yes.</p> <p>2 Q. Now, nothing in what he testified</p> <p>3 to suggested that he touched or moved the</p> <p>4 QuickDraw spring during that action, right?</p> <p>5 A. Okay. I agree he does not</p> <p>6 reference the QuickDraw spring during that</p> <p>7 portion of his testimony.</p> <p>8 Q. And following up on that, as he</p> <p>9 says, "I put it in," and he does not</p> <p>10 describe any significant movement -- or two</p> <p>11 movements of the stand. So if your theory</p> <p>12 was correct he would have put it</p> <p>13 incorrectly -- if your second theory was</p> <p>14 correct he would put it correctly, right?</p> <p>15 A. Okay.</p> <p>16 Q. And then he has to move part of</p> <p>17 the upper portion while pulling the trigger,</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. And if he did that, and the cable</p> <p>21 was somehow stuck to the back of the tree</p> <p>22 through some magical means we don't know of</p> <p>23 right now because there wasn't anything on</p> <p>24 the tree, but if it hypothetically did</p> <p>25 that --</p>	<p style="text-align: right;">232</p> <p>1 being seriously injured in a fall event,</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. So isn't it fair to say that's</p> <p>5 dangerous?</p> <p>6 A. It would be one's interpretation.</p> <p>7 Q. So the manual specifically tells</p> <p>8 you not to do that, right?</p> <p>9 A. The manual says, "Under no</p> <p>10 circumstances should you ever release the</p> <p>11 cable from the platform or seat climber to</p> <p>12 make adjustments once you are off the</p> <p>13 ground."</p> <p>14 Q. Okay. So that's the first place.</p> <p>15 That's on page 1, and you just read it.</p> <p>16 That's a bullet point on the first page.</p> <p>17 And by that it's saying under no</p> <p>18 circumstances, which means never, right?</p> <p>19 A. Under no circumstances so, yes,</p> <p>20 that would imply never.</p> <p>21 Q. And then if you look at page 6,</p> <p>22 again, there is a warning on this page --</p> <p>23 that's the lowest one in the left-hand</p> <p>24 column that says, "Never release the cable</p> <p>25 from the platform or seat climber to make</p>

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59 (233 to 236)

233	<p>1 adjustments once you are off the ground." 2 Do you see that? 3 A. I do see that. 4 Q. And so we can agree that Summit 5 specifically warned the user never to do 6 that, right? 7 A. Summit warned the user to do that 8 in these instructions, yes. 9 Q. To never do that, right? 10 A. To never release the cable. 11 Q. And we can agree that Mr. Vandine 12 failed to follow those instructions and 13 warnings, true? 14 A. Mr. Vandine testified that he did 15 not read these instructions. 16 Q. But that's not my question. These 17 are the instructions, right? 18 A. These are the instructions, yes. 19 Q. And they tell you not to do it, 20 right? 21 A. They say not to do it. 22 Q. Mr. Vandine didn't follow them, 23 right? 24 A. Mr. Vandine disconnected the cable 25 at height, which he wasn't -- he was not</p>	235	<p>1 A. Those old Summit Vipers. 2 Q. You don't remember the 2002 3 warnings suggesting you should never do 4 that? 5 A. I did not. I have read the 6 warnings now. I did not recall the warnings 7 at the time that I did that. 8 Q. How old were you when you did 9 that? 10 A. I couldn't tell you an exact age. 11 Q. Okay. Let's talk a minute about 12 the importance of harnesses. I understand 13 you own an X-1 Hunter Safety System Harness, 14 right? 15 A. Right. 16 Q. And you used it at all times when 17 you were in a climbing treestand? 18 A. Yes. 19 Q. From the point you leave the 20 ground to the point of return? 21 A. This is all said, I haven't used a 22 climbing treestand in ten years or so. 23 Q. When you last used it did you wear 24 your harness? 25 A. Yes, I did.</p>
234	<p>1 unaware he wasn't supposed to do. 2 Q. Right. My question is they 3 specifically tell you not to do that in two 4 places and he did it, so he did not follow 5 the instructions, right? 6 A. He did not follow the instructions 7 regarding the disconnection of the cable. 8 Q. Okay. In your history of 9 climbing, have you ever done that? 10 A. Yes, I have. 11 Q. You removed a cable at height? 12 A. Yeah. 13 Q. For what reason? 14 A. To get around a limb. 15 Q. Were you fully tied off to the 16 tree at the time with a harness? 17 A. I believe I was. 18 Q. And did you do that knowing that 19 it was a potential dangerous? 20 A. I knew that climbing the tree was 21 potentially dangerous. I wasn't aware of 22 instructions with those particular 23 treestands regarding the disconnection of a 24 cable from the stand. 25 Q. What treestand did you do it on?</p>	236	<p>1 Q. And did you do so because you knew 2 it would prevent you from hitting the ground 3 in a fall? 4 A. I knew it would restrain me to the 5 tree should something happen. 6 Q. That's what the harnesses are 7 tested for, right? 8 A. That's correct. 9 Q. And they're designed to prevent 10 you from hitting the ground, right? 11 A. That's correct. 12 Q. And there are instructions and 13 warnings that tell you how use to a harness 14 that has been around since about 2004; are 15 you aware of that? 16 A. That would make sense. 17 Q. Because that when they were 18 mandated, right? 19 A. (Witness nods head.) 20 Q. Is that a "yes"? 21 A. That's correct. Sorry. 22 Q. 2007 the treestand standards 23 required inclusion of a video in all 24 treestands, are you aware of that? 25 A. I am aware that they're included.</p>

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60 (237 to 240)

<p style="text-align: right;">237</p> <p>1 The specific date I'm not sure of.</p> <p>2 Q. And the universal mention on those</p> <p>3 is to minimize the slack in your tether at</p> <p>4 all times when using a harness, right?</p> <p>5 A. Correct.</p> <p>6 Q. And the reason to do that is to</p> <p>7 prohibit you falling below your treestand,</p> <p>8 so you can get back up into it, right?</p> <p>9 A. Yes, it reduces the distance that</p> <p>10 you fall.</p> <p>11 Q. Now, these harnesses are</p> <p>12 specifically tested so that they know they</p> <p>13 will relate -- strike that. These harness</p> <p>14 are specifically tested so we know that they</p> <p>15 will arrest the fall of a person within the</p> <p>16 weight limits, right?</p> <p>17 A. Correct.</p> <p>18 Q. They're also specifically tested</p> <p>19 so that the person will not suffer injuries</p> <p>20 when they fall, are you aware of that?</p> <p>21 A. I'm not aware of that testing.</p> <p>22 Q. You're not aware of the fact that</p> <p>23 they test the suspension release -- not the</p> <p>24 suspension release. They test the arrest</p> <p>25 force of the harnesses when they drop down</p>	<p style="text-align: right;">239</p> <p>1 little bit of ride down event.</p> <p>2 A. Right.</p> <p>3 Q. So it's not just a snap stop. It</p> <p>4 lets you kind of jerk down. Almost like</p> <p>5 you're pumping on your brakes within driving</p> <p>6 on ice, right?</p> <p>7 A. Sure. Yeah.</p> <p>8 Q. Now, you're aware that throughout</p> <p>9 Summit's written warnings and instructions</p> <p>10 and their video written instructions they</p> <p>11 repeatedly advise the user that they must</p> <p>12 wear a fall arrest system at all times when</p> <p>13 using this product?</p> <p>14 A. Through their instructions and</p> <p>15 warnings, yes.</p> <p>16 Q. Are you aware that they define it</p> <p>17 as a misuse if you're not using them?</p> <p>18 A. I'm not sure I recall that exact</p> <p>19 language, but...</p> <p>20 Q. Are you aware that they include</p> <p>21 specific harness instructions that discuss</p> <p>22 the required use of harnesses?</p> <p>23 A. Are you referring to the specific</p> <p>24 instructions included with a harness, or --</p> <p>25 I misunderstood. I'm sorry.</p>
<p style="text-align: right;">238</p> <p>1 to make sure that they meet the threshold to</p> <p>2 cause injuries?</p> <p>3 A. If that's part of the testing I</p> <p>4 may have read that, but I wasn't aware of</p> <p>5 any testing done on things that weren't an</p> <p>6 instrument in mannequining.</p> <p>7 Q. One of the things they test in an</p> <p>8 instrument mannequining, you'd be happy to</p> <p>9 know it include -- the manufacturers of your</p> <p>10 harness, the Hunter Safety System folks, the</p> <p>11 guys from Danville, Alabama, they test them</p> <p>12 as well as everybody else for maximum fall</p> <p>13 resistance force. In other words, maximum</p> <p>14 force that will be seen during a fall event.</p> <p>15 A. Okay.</p> <p>16 Q. And you're aware that on the</p> <p>17 tethers you have these foldaway tears or</p> <p>18 break-away tears?</p> <p>19 A. Correct.</p> <p>20 Q. You see those in seatbelts?</p> <p>21 A. Correct.</p> <p>22 Q. And they are a matter of sort of</p> <p>23 --</p> <p>24 A. Energy absorption.</p> <p>25 Q. In other words, it gives you a</p>	<p style="text-align: right;">240</p> <p>1 Q. Summit includes a second set of</p> <p>2 instructions that are harness specific.</p> <p>3 Have you read those?</p> <p>4 A. I have seen them. I don't know if</p> <p>5 I read them in entirety.</p> <p>6 Q. Would you be surprised that they</p> <p>7 specifically advise a user to always remain</p> <p>8 harnessed to a tree?</p> <p>9 A. I would not be surprised.</p> <p>10 Q. Now, you made some reference</p> <p>11 regarding harness use in the treestand</p> <p>12 field. And you've made some references in</p> <p>13 your reports to some studies.</p> <p>14 A. That's correct.</p> <p>15 Q. The studies referenced in your</p> <p>16 report include a couple of articles, a Henry</p> <p>17 Ford study and the NEISS data, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Prior to this case had you done</p> <p>20 any type of work, in your field, to ever</p> <p>21 study or look at harness use with</p> <p>22 treestands?</p> <p>23 A. No.</p> <p>24 Q. Now, have you -- strike that.</p> <p>25 Each of those things that you've</p>

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61 (241 to 244)

241	<p>1 cited -- sources that you've cited in your</p> <p>2 opinions, talk generally about harness use.</p> <p>3 Are you aware of that?</p> <p>4 A. Yes.</p> <p>5 Q. Now, this particular treestand is</p> <p>6 a climbing treestand, right?</p> <p>7 A. That's correct.</p> <p>8 Q. Do any of those studies</p> <p>9 specifically address the use of harnesses</p> <p>10 with climbing treestands?</p> <p>11 A. I would have to review each one of</p> <p>12 those studies again.</p> <p>13 One of the studies made mention</p> <p>14 that one of the issues they had in gathering</p> <p>15 data was the lack of reporting that occurred</p> <p>16 during each mishap.</p> <p>17 Q. That was the Henry Ford study?</p> <p>18 A. That's right.</p> <p>19 Q. We're going to talk a little bit</p> <p>20 about that in a few minutes, but I just --</p> <p>21 as I've looked at that information, and you</p> <p>22 include it in your file materials, none of</p> <p>23 them specifically relate to climbing</p> <p>24 treestands, right?</p> <p>25 A. They mention treestands in</p>	243	<p>1 using the three-point climbing technique and</p> <p>2 then attach the harness at height, right?</p> <p>3 A. Typically. I know there has been</p> <p>4 a push for lifelines to be adhered to or</p> <p>5 safety ropes to be affixed to the climbing</p> <p>6 ladder, so you're connected at all points.</p> <p>7 Q. Sure. You can buy an aftermarket</p> <p>8 pen and lifeline. Hunter Safety Systems</p> <p>9 would be very happy -- you're referencing</p> <p>10 their specific product, or its equivalent</p> <p>11 can be used in ladder stands, but not all</p> <p>12 ladder stands come with lifelines, right?</p> <p>13 A. I would agree with that.</p> <p>14 Q. And the manufacturers may say:</p> <p>15 Look, this is the safety issue, if you use a</p> <p>16 three-point climbing technique -- which is</p> <p>17 the technique used in ladders -- until you</p> <p>18 get to the platform and then you're going to</p> <p>19 tie in and be your harnessed, right?</p> <p>20 A. Okay.</p> <p>21 Q. You agree with that?</p> <p>22 A. Yes.</p> <p>23 Q. And my point is that if they're</p> <p>24 asked a question: Were you wearing your</p> <p>25 harness when you were climbing into the</p>
242	<p>1 general. They don't specify fixed or</p> <p>2 climbing.</p> <p>3 Q. Well, there's also ladder stands,</p> <p>4 right?</p> <p>5 A. That's correct.</p> <p>6 Q. And there's also tripods, right?</p> <p>7 A. That's correct.</p> <p>8 Q. And tripod harnesses aren't used</p> <p>9 because there's no place to attach them,</p> <p>10 right?</p> <p>11 A. That's correct.</p> <p>12 Q. So a person that says: I'm</p> <p>13 hunting from a tripod treestand, and they</p> <p>14 ask him if you're using a harness, he may be</p> <p>15 using the product completely appropriately</p> <p>16 and says: No, I'm not wearing a harness,</p> <p>17 right?</p> <p>18 A. That could be.</p> <p>19 Q. Somebody asks the question of a</p> <p>20 ladder stand person: Do you wear your</p> <p>21 treestand harness attached to a tree from</p> <p>22 all points from when you leave the ground</p> <p>23 until you return to the ground, they're</p> <p>24 going to say, no, because in the appropriate</p> <p>25 use of a ladder stand you climb up to height</p>	244	<p>1 treestand? They might say, no, and they're</p> <p>2 using that treestand completely</p> <p>3 appropriately, but they're indicating that</p> <p>4 they weren't wearing a harness at the</p> <p>5 specific time, which is giving larger</p> <p>6 numbers to harness use, right?</p> <p>7 A. The treestand industry pushes and</p> <p>8 advocates that you should be connected any</p> <p>9 time you leave the ground, right?</p> <p>10 I think it's arguable that the</p> <p>11 treestand use and how falls are reported</p> <p>12 come from a variety of treestands and not</p> <p>13 just these stands that are not requiring</p> <p>14 harnesses at height.</p> <p>15 I think there is a lack of</p> <p>16 reporting, and I think that the different --</p> <p>17 the numbers from industry indicate that</p> <p>18 there are a variety of stands and a variety</p> <p>19 of individuals falling from a variety of</p> <p>20 stands that are not harnessed at the time of</p> <p>21 the fall.</p> <p>22 Q. Okay. So let's talk a little bit</p> <p>23 about these.</p> <p>24 These sources that you've cited</p> <p>25 all relied on certain data?</p>

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Transcript of Jarrett Waters
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62 (245 to 248)

<p style="text-align: right;">245</p> <p>1 A. Sure.</p> <p>2 Q. You've not seen any of that data,</p> <p>3 right?</p> <p>4 A. In the NEISS data?</p> <p>5 Q. Well, first of all, have you seen</p> <p>6 any of the detail from what was relied upon</p> <p>7 by TSSA? Did you look through specifically</p> <p>8 the NEISS data?</p> <p>9 A. I did access some of that database</p> <p>10 and was looking for examples of falls, yes.</p> <p>11 Q. Well, great. So you know --</p> <p>12 because I've looked through the NEISS data</p> <p>13 multiple times, so you know that things like</p> <p>14 somebody walking through the woods with a</p> <p>15 treestand, trips and breaks their leg,</p> <p>16 because it uses a term "treestand," it's</p> <p>17 reported as a treestand injury, right?</p> <p>18 A. They can be, yes.</p> <p>19 Q. Somebody that says that I'm up in</p> <p>20 the treestand and I cut my finger on the</p> <p>21 broadhead gets reported as a treestand</p> <p>22 injury, right?</p> <p>23 A. Potentially.</p> <p>24 Q. And so not all of the injuries</p> <p>25 reported in treestand -- as treestand</p>	<p style="text-align: right;">247</p> <p>1 talk about being a flaw in the data, right?</p> <p>2 A. Potentially, yes.</p> <p>3 Q. The other things that happens --</p> <p>4 another thing that happens in NEISS data, is</p> <p>5 that it doesn't differentiate between a</p> <p>6 homemade stand and a commercially purchased</p> <p>7 stand, right?</p> <p>8 A. I would agree with that.</p> <p>9 Q. So if a person, you know, goes up</p> <p>10 and staples a 2-by-4 into a tree and says:</p> <p>11 I was hunting on my treestand, it reports it</p> <p>12 as a treestand incident and may have nothing</p> <p>13 to do with the treestand industry, right?</p> <p>14 A. In that specific case, yes. This</p> <p>15 is -- I mean this is data, though, that's</p> <p>16 publically available to the treestand</p> <p>17 industry, and therefore is an indication</p> <p>18 that not everyone wears a harness when</p> <p>19 climbing at height.</p> <p>20 Q. Well, let's -- hold on a second.</p> <p>21 Let's talk about that for a second. The</p> <p>22 NEISS data is taken from hospitals, right?</p> <p>23 A. Correct.</p> <p>24 Q. And those good folks at the</p> <p>25 hospital, what they're really after is:</p>
<p style="text-align: right;">246</p> <p>1 injuries in NEISS even involve a treestand</p> <p>2 related incident, right?</p> <p>3 A. And I think that could be flipped</p> <p>4 and say there are a lot of incidents that</p> <p>5 don't ever get reported to NEISS that</p> <p>6 involve treestand falls without the use of</p> <p>7 harnesses.</p> <p>8 Q. We're just talking about the NEISS</p> <p>9 data --</p> <p>10 A. Okay.</p> <p>11 Q. -- and why it's not a reliable</p> <p>12 area to look at. Because you know that</p> <p>13 there are errors like we just talked about,</p> <p>14 that are overreporting the number of</p> <p>15 treestand injuries, right?</p> <p>16 A. Then why does the treestand</p> <p>17 industry rely on the data from those</p> <p>18 publications as part of their marketing and</p> <p>19 advertising and teaching?</p> <p>20 Q. I'm asking you about the data that</p> <p>21 they used. You know that there are flaws in</p> <p>22 that data, right?</p> <p>23 A. There are issues in how the data</p> <p>24 is reported to the database.</p> <p>25 Q. Which as an engineer you would</p>	<p style="text-align: right;">248</p> <p>1 What injury did you suffer and how do we</p> <p>2 treat it?</p> <p>3 A. I would hope so.</p> <p>4 Q. They're not trying to investigate</p> <p>5 exactly how an accident occurred, or what</p> <p>6 specific product was being used, right?</p> <p>7 A. I would agree that. Their primary</p> <p>8 care is the care of the patient.</p> <p>9 Q. So looking at hospital reports and</p> <p>10 how it's coded in and ultimately gets report</p> <p>11 to the NEISS is not, you would agree with</p> <p>12 me, a reliable indicator of harness use</p> <p>13 because of the flaws in the data, right?</p> <p>14 MR. DARIA: Objection to form.</p> <p>15 THE WITNESS: It is reliable in</p> <p>16 the fact that there are individuals that</p> <p>17 fall from heights that aren't harnessed.</p> <p>18 The specific number that the data reports</p> <p>19 or underreport may be questionable, based</p> <p>20 on the inputs.</p> <p>21 BY MR. SUTTON:</p> <p>22 Q. Let's talk for a second about</p> <p>23 seatbelts.</p> <p>24 A. Okay.</p> <p>25 Q. So seatbelts, since the '60s and</p>

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63 (249 to 252)

249	<p>1 '70s, the prevalent use of seatbelts has</p> <p>2 changed greatly, right?</p> <p>3 A. Yes.</p> <p>4 Q. Twenty years ago, people might</p> <p>5 say: Well, it's kind of your choice whether</p> <p>6 you wear a seatbelt. Universally now</p> <p>7 everybody knows you have to wear your</p> <p>8 seatbelt. Failing to do so is going to be</p> <p>9 dangerous, right?</p> <p>10 A. I believe most people have that</p> <p>11 perception, however the automakers still</p> <p>12 provide warnings, both visual and auditory</p> <p>13 regarding their use.</p> <p>14 Q. You can't put an auditory warning</p> <p>15 unless you're talking about the video on a</p> <p>16 treestand, because being quiet is one of the</p> <p>17 most important things, right?</p> <p>18 A. Unless it sounds like a deer call.</p> <p>19 Q. So in a warning label it says --</p> <p>20 both stamped in the treestand and on the</p> <p>21 warning label to wear your harness at all</p> <p>22 times, right?</p> <p>23 A. The warning that's stamped into</p> <p>24 the treestand is very -- at least</p> <p>25 Mr. Vandine's treestand was very difficult</p>	251	<p>1 BY MR. SUTTON:</p> <p>2 Q. In fact, what's cited in your</p> <p>3 report, or in your articles that you gather</p> <p>4 is an article written by Mr. Mayhew, who</p> <p>5 incidentally, works alongside the folks at</p> <p>6 Hunter Safety Systems, Mr. Wydner. And</p> <p>7 their concern was just saying: Hey, it's</p> <p>8 important to wear your harness, right?</p> <p>9 A. I would agree they're saying that</p> <p>10 it's important to wear your harness. But</p> <p>11 they are using numbers that represent</p> <p>12 individuals that don't wear their harness as</p> <p>13 a training technique or instruction</p> <p>14 technique, therefore it's foreseeable to the</p> <p>15 industry that not everyone wears a harness.</p> <p>16 Q. You keep saying that it's</p> <p>17 foreseeable, but it doesn't make it right.</p> <p>18 It doesn't make it the smart decision. It's</p> <p>19 doesn't make it the decision that should be</p> <p>20 made by a prudent user of a treestand, does</p> <p>21 it?</p> <p>22 A. No. But it should be foreseeable</p> <p>23 to the designers that the treestand should</p> <p>24 be made in a manner that does not allow for</p> <p>25 a mispositioned cable or a user action to</p>
250	<p>1 to read, and would have been difficult from</p> <p>2 his position. It was difficult to read</p> <p>3 under photograph, let alone at a hunting</p> <p>4 scenario.</p> <p>5 Q. Okay. Well, it's also in the</p> <p>6 instructions and also in that warning tag</p> <p>7 that he intentionally cut off, right?</p> <p>8 A. It was in the instructions and it</p> <p>9 was in the tag that was not present on his</p> <p>10 stand.</p> <p>11 Q. And let's talk a little bit, you</p> <p>12 reference the treestand accidents reported</p> <p>13 from the TSSA, right?</p> <p>14 A. Yes.</p> <p>15 Q. They're just referencing the NEISS</p> <p>16 data, right? That we know is unreliable,</p> <p>17 right?</p> <p>18 MR. DARIA: Objection to the</p> <p>19 form. Go ahead.</p> <p>20 THE WITNESS: It's my</p> <p>21 understanding that they did rely on that</p> <p>22 data. I'm not sure regarding all of the</p> <p>23 other data that was relied upon or any</p> <p>24 other data that was relied upon.</p> <p>25</p>	252	<p>1 unintentionally disconnect a cable.</p> <p>2 Q. Well, you haven't shown me any</p> <p>3 type of testing that shows it</p> <p>4 unintentionally can be disconnected. You</p> <p>5 showed me a video showing you intentionally</p> <p>6 disconnect it, right?</p> <p>7 A. Mr. Vandine believed he reinserted</p> <p>8 the cable. When he reinstalled it he</p> <p>9 believed he inspected it and he believed it</p> <p>10 was fully inserted and safe and that it</p> <p>11 disconnected upon loading the stand.</p> <p>12 Q. Well, let's just nip this in the</p> <p>13 bud. Summit says: We produced a product,</p> <p>14 which by its cable bracket and cable</p> <p>15 assembly itself -- shapes of those, is</p> <p>16 designed so that the cable wants to stay in</p> <p>17 those cable brackets, doesn't come out.</p> <p>18 A. Should it be fully inserted, yes.</p> <p>19 Q. And, in fact, in your testing in</p> <p>20 which you disengaged the spring, that's what</p> <p>21 you found, that it wants to stay in the</p> <p>22 cable bracket, right?</p> <p>23 A. If there is no motion to the</p> <p>24 stand, it's going to stay where it currently</p> <p>25 was.</p>

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64 (253 to 256)

<p style="text-align: right;">253</p> <p>1 Q. Summit then added a redundant 2 safety device or safety feature which is the 3 QuickDraw spring to keep it from backing 4 out, moving actively in the cable bracket? 5 A. That is correct. The QuickDraw 6 spring however does not prevent somebody 7 from partially inserting the cable into the 8 keyway on the top of the cable bracket. 9 Q. But you don't disagree that Summit 10 included a redundant safety feature in a 11 keylock QuickDraw spring to keep that cable 12 from moving axially. 13 A. I believe they thought it was a 14 redundant safety. As my opinions state in 15 the report, a redundant safety shouldn't be 16 able to be engaged or disengaged through 17 some inadvertent action foreseen within the 18 normal use of the stand and should require a 19 separate and deliberate action by the user. 20 Q. So you disagree with it, but you 21 admit that that's what they did. They 22 included something that they believe was a 23 secondary or redundant safety part of this 24 product, right? 25 A. Yes.</p>	<p style="text-align: right;">255</p> <p>1 have been incorporated into the stand that 2 would have been a more suitable remedy for 3 the root cause of this whole thing which is 4 the cable becoming disconnected from the 5 treestand. 6 Q. Well, if we assume that the 7 accident happened because he intentionally 8 removed it at height and didn't put it fully 9 back into the cable bracket -- you with me? 10 A. I'm with you. I don't agree that 11 he intentionally mispositioned the cable. I 12 believe he thought he had it fully 13 positioned within the cable bracket when he 14 went to load it. 15 Q. I meant he intentionally moved it 16 at height, right? 17 A. He chose to remove the cable from 18 the bracket and reinstall it above the limb, 19 yes. 20 Q. And he had no difficulty climbing 21 up to the location of the limb before that, 22 right? 23 A. None that he discusses in his 24 deposition. 25 Q. So you would agree with me that if</p>
<p style="text-align: right;">254</p> <p>1 Q. Have you done any type of testing 2 on a tree where you removed a spring, 3 climbed up and down a tree just to see how 4 the cable moves? 5 A. I have not done than testing. 6 My prior use of the treestand did 7 not include a QuickDraw spring, and just 8 included the hatch covers. My attention was 9 never towards the movement of the cable stop 10 within the bracket but was for the 11 inspection of the hatch cover or safety 12 cover to make sure it closed. 13 Q. And Summit includes, by the way, a 14 third redundant safety feature which is a 15 full-body harness to prevent a user from 16 falling to the ground? 17 A. Which is not mechanically 18 integrated into the stand. 19 Q. No full-body harness is 20 mechanically integrated into any the stand. 21 In fact, it's in the standard not to have it 22 integrated. It can't be integrated by 23 standard, right? 24 A. I would agree. There are design 25 options or available features that could</p>	<p style="text-align: right;">256</p> <p>1 he hadn't intentionally removed the cable, 2 this accident would not have occurred? 3 A. This same root cause could have 4 occurred at ground level when he was 5 initially setting up the stand and still 6 resulted in a fall. 7 Q. Sir, we just said he didn't have 8 any problems climbing up, right? 9 A. He did not have any problems 10 climbing up on the day of the incident. 11 Q. The stand worked appropriately all 12 the way up to that limb, right? 13 A. Based on his testimony. The 14 mispositioning of the cable within the cable 15 stop could still occur at ground level 16 though. I'm not saying that he traveled up 17 the entire tree with cable mispositioned. 18 I'm saying that this mispositioning of the 19 cable could come any time that it was 20 installed. 21 Q. You mean if a user doesn't follow 22 the express instructions on how to properly 23 and appropriately connect it into the cable 24 bracket? 25 A. If the user don't visually inspect</p>

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Conducted on February 7, 2024

65 (257 to 260)

<p style="text-align: right;">257</p> <p>1 based on those images, it could be possible</p> <p>2 that the stand could be positioned in a</p> <p>3 manner that holds weight and the cable not</p> <p>4 fully installed in the bracket.</p> <p>5 Q. You would agree he with me that if</p> <p>6 Mr. Vandine had taken the time and inspected</p> <p>7 the cable assembly, in the cable bracket, as</p> <p>8 shown on page 6 of the instruction manual,</p> <p>9 he could have seen whether or not it was</p> <p>10 appropriately installed and avoided this</p> <p>11 accident?</p> <p>12 A. If he referenced that manual while</p> <p>13 looking at the side of the bracket, yes, he</p> <p>14 could have been able to determine that the</p> <p>15 cable was not fully seated.</p> <p>16 Q. If he didn't reference a manual --</p> <p>17 but that's what he did -- in other words,</p> <p>18 look at it from the side. You would agree</p> <p>19 with me that he could tell whether or not</p> <p>20 the cable was appropriately and properly</p> <p>21 installed --</p> <p>22 A. He doesn't say he looks it from</p> <p>23 the side up in the tree.</p> <p>24 Q. We're going to get to that in a</p> <p>25 second. I'm just saying if he'd done that,</p>	<p style="text-align: right;">259</p> <p>1 properly placed in the bracket?</p> <p>2 MR. DARIA: Objection to the</p> <p>3 form.</p> <p>4 THE WITNESS: Mr. Vandine relied</p> <p>5 on loading the stand or temporarily</p> <p>6 placing weight on the stand as his method</p> <p>7 of inspecting the cable based on his</p> <p>8 experience.</p> <p>9 BY MR. DARIA:</p> <p>10 Q. Did I ask you about loading?</p> <p>11 A. You did not.</p> <p>12 Q. I asked you about whether it was</p> <p>13 easy to see, right?</p> <p>14 A. From the side it could be</p> <p>15 observed, yes.</p> <p>16 Q. You agree with me that it is easy</p> <p>17 to see from the side as you're standing in</p> <p>18 the middle of the stand, right?</p> <p>19 A. Within a certain proximity, yes,</p> <p>20 given all sorts of lighting circumstances.</p> <p>21 Q. Well, this was the middle of the</p> <p>22 day, right?</p> <p>23 A. His incident was the middle of the</p> <p>24 day, I agree.</p> <p>25 Q. So under his lighting</p>
<p style="text-align: right;">258</p> <p>1 he would have been able to tell whether it</p> <p>2 was appropriately and properly installed,</p> <p>3 right?</p> <p>4 A. Yes, he would have been able to</p> <p>5 observe that from the side.</p> <p>6 Q. Now, when a person is using a</p> <p>7 climbing treestand, they're standing in the</p> <p>8 middle of the outer rim of the upper portion</p> <p>9 of the treestand, right?</p> <p>10 A. Correct.</p> <p>11 Q. And so all they have to do to look</p> <p>12 is to bend over and look to the left or to</p> <p>13 the right to see if that cable is properly</p> <p>14 inserted in the cable bracket, right?</p> <p>15 A. They could bend over and look,</p> <p>16 yes.</p> <p>17 Q. It's visible both to the right and</p> <p>18 to the left of them if they just take the</p> <p>19 time to look at it, right?</p> <p>20 A. It -- yes, it would be visible</p> <p>21 from the side.</p> <p>22 Q. And its easy to see just as shown</p> <p>23 in page 6 of the instruction manual, it's</p> <p>24 easy to see if Mr. Vandine had just taken</p> <p>25 the time to check to see if that cable was</p>	<p style="text-align: right;">260</p> <p>1 circumstances you agree if he had taken the</p> <p>2 time he could have seen it, right?</p> <p>3 A. If he would have bent over and</p> <p>4 looked into the side of the bracket he would</p> <p>5 have been able to determine whether the</p> <p>6 cable was partially or fully seated.</p> <p>7 Q. Please turn to page 35 of your</p> <p>8 report.</p> <p>9 Okay, page 35 of your report, your</p> <p>10 have photographs taken from a top-down view</p> <p>11 of the cable in the cable bracket; do you</p> <p>12 see that?</p> <p>13 A. I do.</p> <p>14 Q. The one on the left says, "fully</p> <p>15 seated," the two on the right says,</p> <p>16 "partially seated." Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Now, do you agree with me that</p> <p>19 looking down and visually inspecting it even</p> <p>20 from this location, shows that it's easy to</p> <p>21 see whether or not the cable is properly in</p> <p>22 the cable bracket?</p> <p>23 A. The photos are taken with the</p> <p>24 camera directly on top of the cable bracket.</p> <p>25 And also we have the ability to sit here and</p>

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Conducted on February 7, 2024

66 (261 to 264)

<p style="text-align: right;">261</p> <p>1 look at these for a longer period of time. 2 I believe at a glance it is possible to -- 3 and it is difficult that one may have 4 trouble -- strike that. 5 One may have issues perceiving and 6 understanding that that cable is fully 7 seated should they quickly look at it from 8 their climbing position. 9 These photos aren't taken from a 10 climbing position. They're taken from 11 directly over the bracket. Figure 32 on 12 page 34 represents photographs from a 13 climbing position. 14 Q. Okay. My question is first on 35. 15 We haven't gotten to 34 yet. Figure 33, on 16 page 35. You would agree with me that a 17 person standing in the stand can bend over 18 and look directly at this cable bracket on 19 the top like where these photographs are 20 taken to determine whether or not this cable 21 bracket, it has the cable fully inserted? 22 A. It is possible. But at a quick 23 glance or look it may be difficult to 24 perceive. 25 Q. You're talking about a person who</p>	<p style="text-align: right;">263</p> <p>1 time to visually inspect that. Mr. Vandine 2 chose, based on his experience, to test it 3 by loading it up. 4 Q. Second, if he had done, and taken 5 the time to view it, whether it was from the 6 side as shown in page 6 of the instruction 7 manual or directly on top as shown on page 8 35 of your report, figure 33, a person could 9 easily visually inspect whether or not the 10 cable was properly installed in the cable 11 bracket, true? 12 A. If they looked at it long enough, 13 yes, could. 14 Q. And a person whose life is on the 15 line, should take the time to look at it 16 long enough, right? 17 A. They should look at it long enough 18 to be able to determine whether they feel 19 that it's safe to continue. 20 Q. Okay. Now, we talked a little bit 21 about the TSSA, and you don't know any of 22 the background from the data they're 23 reporting, true? 24 A. (No audible response.) 25 Q. Just trying to finish this</p>
<p style="text-align: right;">262</p> <p>1 is not wearing a harness, has fallen 2 previously from a tree, and been injured, 3 works in the tree field where the 4 requirement of the state of New Jersey is to 5 always wear your harness above the ground, 6 has a harness, and has gone contrary to 7 instructions up in the air, and has removed 8 the cable assembly; is it your testimony 9 under oath, to this jury that that person 10 should not take the time to make sure that 11 they properly inserted into the cable 12 bracket? 13 A. Mr. Vandine said he inspected it 14 by pushing down on it. He was given the 15 perception that it was fully seated based on 16 his experience and how he chose to inspect 17 it. 18 Q. That's not my question. My 19 question, is it your testimony to the jury 20 that a person that's done that under those 21 circumstances I just read to you, should not 22 take the time to visually inspect and make 23 sure that that cable is properly placed in 24 the cable bracket? 25 A. I do believe he should take the</p>	<p style="text-align: right;">264</p> <p>1 subject, and then we'll break for lunch. 2 A. You're referring to the "ABCs," 3 the TSSA's article? 4 Q. The TSSA's "ABCs." They reference 5 a certain number of people that have fallen, 6 but you don't know where they got the data 7 or what the data said? 8 A. That's correct. 9 Q. And actually I think they may have 10 referred to the NEISS system which means 11 that's a system taken from medical 12 providers, which is -- has flaws in it, 13 right? 14 MR. DARIA: Objection to the 15 form. 16 THE WITNESS: I think some of 17 the inputs are flawed, but still 18 represents that there are individuals that 19 do not wear a harness while hunting from a 20 treestand. 21 BY MR. SUTTON: 22 Q. Okay. Then there's a CPSC and 23 that's referenced in here. I didn't see any 24 CPSC data in your -- 25 A. Consumer Product Safety</p>

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67 (265 to 268)

<p style="text-align: right;">265</p> <p>1 Commission?</p> <p>2 Q. Yeah. I saw there was some stuff</p> <p>3 about a consumer that had contacted the CPSC</p> <p>4 about a Viper stand, but I didn't see</p> <p>5 anything related to harness in your file.</p> <p>6 What are you referring to here?</p> <p>7 A. Can you point me to the page in</p> <p>8 the report?</p> <p>9 Q. I know what it says, so I don't</p> <p>10 know exactly where it is. It says, "The</p> <p>11 Consumer Product Safety Commission, CPSC,</p> <p>12 tracks incidents relating to the use of</p> <p>13 specific products. Many of the reported</p> <p>14 incidents and injuries include users that</p> <p>15 fell to the ground as a result of not being</p> <p>16 connected to the tree through to use of</p> <p>17 safety harness." That's the first part of</p> <p>18 it. It goes on in another sentence which</p> <p>19 I'll read to you in a second.</p> <p>20 The question I have is, I don't</p> <p>21 know what data you're referring to, because</p> <p>22 I didn't like see any data in your file</p> <p>23 materials.</p> <p>24 A. The data I was referring to was --</p> <p>25 bear with me for a moment. The CPSC data</p>	<p style="text-align: right;">267</p> <p>1 BY MR. SUTTON:</p> <p>2 Q. I'm just asking about the data</p> <p>3 now. So basically, what I'm looking at is</p> <p>4 the data that you reference in the CPSC is</p> <p>5 really the same NEISS data?</p> <p>6 A. That's correct.</p> <p>7 Q. You also talk about Dr. Alan</p> <p>8 Lazzara Henry Ford Health, in Michigan?</p> <p>9 A. That's correct.</p> <p>10 Q. And his point is, you know, I</p> <p>11 looked at this medical data, but the problem</p> <p>12 is that that's not what really people are</p> <p>13 treated for, so there are falls that may or</p> <p>14 may not involve treestands or harnesses, we</p> <p>15 don't know, right?</p> <p>16 A. Repeat that, please.</p> <p>17 Q. Dr. Lazzara, I apologize to him if</p> <p>18 I'm not pronouncing correctly, says, for</p> <p>19 instance, "Out of the 33-patient study, four</p> <p>20 cases were documented where a harness was</p> <p>21 being used and five were documented where a</p> <p>22 harness not being used. The report states</p> <p>23 that there is no documentation about harness</p> <p>24 use or nonuse in the majority of the patient</p> <p>25 charts." In other words, it's just not</p>
<p style="text-align: right;">266</p> <p>1 I'm referring to is from an online query of</p> <p>2 the NEISS system.</p> <p>3 Q. Is that in your file somewhere?</p> <p>4 A. It should be. Under "Treestand</p> <p>5 safety, NEISS."</p> <p>6 Q. So it's based on the same NEISS</p> <p>7 data that we agreed was flawed?</p> <p>8 MR. DARIA: Objection to the</p> <p>9 form.</p> <p>10 THE WITNESS: We -- I agreed</p> <p>11 that the input of the NEISS data may not</p> <p>12 represent all these scenarios but is a</p> <p>13 general indication of lack of harness use</p> <p>14 within the industry.</p> <p>15 BY MR. SUTTON:</p> <p>16 Q. Well -- and we talked about the</p> <p>17 fact that as a scientist that means that the</p> <p>18 data was flawed, right?</p> <p>19 MR. DARIA: Objection.</p> <p>20 THE WITNESS: The specific</p> <p>21 numbers to the data may have -- may not</p> <p>22 represent whether high or low the exact</p> <p>23 count of related injuries, but as a trend</p> <p>24 it represents that there are individuals</p> <p>25 that choose not to wear a harness.</p>	<p style="text-align: right;">268</p> <p>1 tracking that.</p> <p>2 A. That's correct.</p> <p>3 Q. So other than those -- and then</p> <p>4 you've got this chart, which I believe is</p> <p>5 the NEISS data. So other than those other</p> <p>6 things which all derive from the medical</p> <p>7 field, do you have -- in which we agree I</p> <p>8 think that the medical professionals are</p> <p>9 looking at the care of the patient not how</p> <p>10 the accident was caused. Do you have any</p> <p>11 other support for your conclusion that a lot</p> <p>12 of folks don't wear harnesses?</p> <p>13 A. I don't think I reference it as "a</p> <p>14 lot of folks." I believe it's some.</p> <p>15 Q. Do you have any idea how many or</p> <p>16 what the percentage is?</p> <p>17 A. I do not know what the percentage</p> <p>18 is.</p> <p>19 You know, from information</p> <p>20 disseminated through the hunting industry,</p> <p>21 and treestand safety, and you know, just in</p> <p>22 general posts that you see of conservation</p> <p>23 officers and emergency response indicate</p> <p>24 that, you know, there are individuals that</p> <p>25 do not wear a harness. What that specific</p>

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Conducted on February 7, 2024

68 (269 to 272)

<p style="text-align: right;">269</p> <p>1 number is and what that percentage is, I do</p> <p>2 not know.</p> <p>3 Q. Let me just tie all this stuff up</p> <p>4 and then we can break. Were you personally</p> <p>5 involved in any studies?</p> <p>6 A. I was not.</p> <p>7 Q. Did you see any of the questions</p> <p>8 or any of the data from which these reports</p> <p>9 were made?</p> <p>10 A. I did not see the input forms that</p> <p>11 they fill out or use to submit the data to</p> <p>12 the NEISS.</p> <p>13 Q. Did you see any of the specific</p> <p>14 data?</p> <p>15 A. I did see the specific data.</p> <p>16 Q. From the NEISS report?</p> <p>17 A. That's correct.</p> <p>18 Q. And that's basically a spreadsheet</p> <p>19 of certain parameters, how that data was</p> <p>20 originally entered, or what, you don't know.</p> <p>21 A. That's correct.</p> <p>22 Q. Do you not know who provided the</p> <p>23 responses to any of these things? In other</p> <p>24 words, the NEISS data, you don't know</p> <p>25 whether it was a technician, a nurse, a</p>	<p style="text-align: right;">271</p> <p>1 A. That would be correct.</p> <p>2 MR. SUTTON: Okay. This is a</p> <p>3 good time for a break.</p> <p>4 - - -</p> <p>5 (Lunch recess.)</p> <p>6 - - -</p> <p>7 MR. SUTTON: Back on the record.</p> <p>8 - - -</p> <p>9 EXAMINATION (Cont'd)</p> <p>10 - - -</p> <p>11 BY MR. SUTTON:</p> <p>12 Q. Mr. Waters, we talked at length</p> <p>13 about harness use and your opinion that</p> <p>14 Mr. Vandine should have been wearing his</p> <p>15 harness. Do you recall that?</p> <p>16 A. I believe the instructions state</p> <p>17 that he should have been wearing a harness.</p> <p>18 I believe my opinion, represented in the</p> <p>19 report, discusses that the industry's aware</p> <p>20 that some individuals do not wear their</p> <p>21 harness.</p> <p>22 Q. Yes, but we also talked about --</p> <p>23 we went around and around about it, and I</p> <p>24 don't need to rehash it about the fact that</p> <p>25 it is your opinion that he should have been</p>
<p style="text-align: right;">270</p> <p>1 doctor, or who provided any of that</p> <p>2 information?</p> <p>3 A. That's correct.</p> <p>4 Q. None of the data is broken down by</p> <p>5 treestand type, right?</p> <p>6 A. Correct.</p> <p>7 Q. And you would agree with me that</p> <p>8 of the four types of treestands, the easiest</p> <p>9 to use a harness on is a climbing treestand,</p> <p>10 right?</p> <p>11 A. A standalone harness, yes, it</p> <p>12 would be a climbing treestand. A safety</p> <p>13 line and harness on a fixed position</p> <p>14 treestand is also easy.</p> <p>15 Q. You don't know how the data was</p> <p>16 captured, true?</p> <p>17 A. I know it was reported to the</p> <p>18 NEISS. I don't know what form was filled</p> <p>19 out in order to report it.</p> <p>20 Q. You don't know what type of</p> <p>21 treestands are being used, true?</p> <p>22 A. That's correct, unless it's</p> <p>23 included in their description.</p> <p>24 Q. Don't know if there were any</p> <p>25 homemade stands, true?</p>	<p style="text-align: right;">272</p> <p>1 wearing a harness at the time of the</p> <p>2 accident, right?</p> <p>3 A. It would have -- yes, he should</p> <p>4 have been wearing a harness at the time.</p> <p>5 Q. Okay. Now, Mr. Vandine was</p> <p>6 injured when he hit the ground. Would you</p> <p>7 agree with that?</p> <p>8 A. That seems to be my understanding</p> <p>9 of it. I wasn't -- I didn't witness his</p> <p>10 fall, so I don't know what he struck on his</p> <p>11 way down to the ground.</p> <p>12 Q. According to the witnesses,</p> <p>13 shortly after his fall event, he was calling</p> <p>14 for help and one of his friends came and</p> <p>15 helped him and led him out of the woods,</p> <p>16 right?</p> <p>17 A. That's correct.</p> <p>18 Q. So he was hunting in the c lose</p> <p>19 proximity of another of his friends, right?</p> <p>20 MR. DARIA: Objection of form.</p> <p>21 THE WITNESS: It's my</p> <p>22 understanding that the other gentleman was</p> <p>23 within earshot of him.</p> <p>24 BY MR. SUTTON:</p> <p>25 Q. And that's all I meant by close</p>

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69 (273 to 276)

273	<p>1 proximity. I know Counsel had an objection, 2 but I just meant somebody was hunting in 3 earshot of him, right? 4 A. (Witness nods head.) 5 Q. Would you agree with me that had 6 Mr. Vandine been wearing his harness and had 7 it attached to the tree at the time of the 8 accident he would not have fallen to the 9 ground where he was injured in this 10 accident? 11 A. He would not have fallen to the 12 ground, that's correct. 13 Q. Would you agree with me, that if 14 he had called for help, he had somebody in 15 earshot to come get him if in the unlikely 16 event he could not get back in the stand? 17 A. We know somebody was hunting 18 within earshot. If he had been suspended by 19 a harness he likely could have yelled out to 20 them, yes. 21 Q. We also know that if using the 22 harness, in the manner and method described 23 in the written and video instructions and 24 warnings that come with the stand, that the 25 slack of the tether should be minimized so</p>	275	<p>1 Q. He did not hurt his hands in this 2 accident, right? 3 A. I don't know if I've seen his 4 medical records, but I don't recall hearing 5 anything of his hands being injured. 6 Q. So given that, you would expect 7 that he would have been able to get back in 8 the treestand, if he was wearing his harness 9 and had been properly attached to the tree? 10 A. He could have lowered the foot 11 platform to an area where he could have 12 transferred to it. 13 Q. There is some mention in your 14 report about suspension trauma; do you 15 recall that? 16 A. I do, yes. 17 Q. You understand, do you not, that 18 the harness that was supplied with this 19 treestand came with a suspension relief 20 strap; are you aware of that? 21 A. That would be my understanding of 22 it, yes. 23 Q. Do you know what a suspension 24 relief strap is? 25 A. I do.</p>
274	<p>1 that the person doesn't fall below the 2 platform, true? 3 A. True. 4 Q. And therefore, if he fell and was 5 arrested by the fall, he should have been in 6 a position to be able to get back on that 7 platform, true? 8 A. He would have been provided an 9 opportunity to do that. I don't know 10 relative height relative to the platform 11 where that would have been relative to his 12 body and whether that would have been 13 feasible or not, or something he was capable 14 of. 15 Q. Well, you've used the systems 16 before so you know if, for instance, the 17 platform, he'd fallen so that the platform 18 was shoulder height or above, he could have 19 grabbed it with his hands, tilted it 20 forward, moved it down the tree and then got 21 it to a location he could easily get on, 22 right? 23 A. If he could have reached it with 24 his hands and both his hands were operable, 25 yes, that would have been a possibility.</p>	276	<p>1 Q. And incidentally, have you talked 2 to Dr. Bishop at all in this case? 3 A. I have not talked to him regarding 4 the details of the case from the time of the 5 inspection. 6 Q. You talked to him -- he was at the 7 inspection? 8 A. Yes. 9 Q. You haven't talked to him since; 10 is that right? 11 A. Correct. 12 Q. What you had indicated in some 13 reports in CPSC about potential suspension 14 trauma, did I see that correctly in your 15 report? 16 A. There were documents provided that 17 reference the CPSC data, and one of the 18 events includes the discussion, I believe, 19 of asphyxiation. 20 Q. Asphyxiation is different than 21 suspension trauma, true? 22 A. I don't claim to be a doctor. My 23 basic understanding of it is I do believe 24 they are different. 25 Q. That's fair enough. You're not a</p>

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Conducted on February 7, 2024

70 (277 to 280)

277	<p>1 biomechanical expert, right?</p> <p>2 A. I'm not a biomechanical engineer.</p> <p>3 Q. And you're not a medical doctor,</p> <p>4 correct?</p> <p>5 A. I'm not a medical doctor.</p> <p>6 Q. You said that the documents were</p> <p>7 provided to you. What documents are you</p> <p>8 talking about?</p> <p>9 A. Materials received 10/19/2023.</p> <p>10 Q. Hold on one second. What folder</p> <p>11 is that in?</p> <p>12 A. On mine that's the name of the</p> <p>13 folder, 230058, materials received</p> <p>14 10/19/2023.</p> <p>15 Q. I don't think I have that folder.</p> <p>16 I have 23-58 CPSC, Materials</p> <p>17 Received 1/11/24. I have the CAD Drawings;</p> <p>18 I have Defense Expert Reports; Dep Exhibits;</p> <p>19 Dep Notes; Invoices; JDW Mini Viper; JDW</p> <p>20 Report; Research; Site Inspection</p> <p>21 Photographs; Stand Inspection Photographs;</p> <p>22 Summit Research; Treestand Safety; Wolf</p> <p>23 Treestand Photographs; Deposition Exhibits;</p> <p>24 Deposition Transcripts; Defendant's Document</p> <p>25 Production; Defendant's Rule 26 Disclosure;</p>	279	<p>1 (Discussion held off the</p> <p>2 record.)</p> <p>3 - - -</p> <p>4 BY MR. SUTTON:</p> <p>5 Q. So that would not -- so that if</p> <p>6 you go back to your main folders. I have</p> <p>7 folders that say things like Defendant's</p> <p>8 Document Production, which I don't see in</p> <p>9 your folders.</p> <p>10 MR. DARIA: I think that was my</p> <p>11 office describing what it was in his file.</p> <p>12 MR. SUTTON: Okay. Because that</p> <p>13 one you were just looking at, the CPSC</p> <p>14 reports, I don't think I've got.</p> <p>15 THE WITNESS: Okay.</p> <p>16 BY MR. SUTTON:</p> <p>17 Q. Basically, just for the record,</p> <p>18 there are a number of folders in your</p> <p>19 physical -- or not physical file, digital</p> <p>20 file, that are entitled like "Materials</p> <p>21 Received" and given certain dates.</p> <p>22 A. That's correct.</p> <p>23 Q. In my file things have been broken</p> <p>24 down in different folders to talk about</p> <p>25 deposition exhibit, deposition transcript,</p>
278	<p>1 Gloucester County Emergency Response;</p> <p>2 Plaintiff's Document Production; Plaintiff's</p> <p>3 Expert Reports; Prior Litigation;</p> <p>4 Defendant's Expert Reports and Affidavits;</p> <p>5 Summit Treestand Brochures, West Deptford.</p> <p>6 Am I missing something?</p> <p>7 A. I'm curious if it's information</p> <p>8 that I was provided that was part of initial</p> <p>9 discovery and you would have received it</p> <p>10 that way.</p> <p>11 I am looking at it in the case</p> <p>12 folder now. I'd be happy to pull it up so</p> <p>13 we can both look at it.</p> <p>14 Q. Yeah. And I'm not asking for</p> <p>15 drafts or anything, which I think is</p> <p>16 protected under the rules. You just</p> <p>17 referenced what appeared to be a folder and</p> <p>18 I'm not sure that you have the same folder</p> <p>19 structure that I have.</p> <p>20 Do you have a different folder</p> <p>21 structure? Do you mind if I take look at</p> <p>22 it? I apologize. I'll come over and look</p> <p>23 over your shoulder.</p> <p>24 MR. DARIA: Off the record.</p> <p>25 - - -</p>	280	<p>1 defendant's document production,</p> <p>2 disclosures, plaintiff's production,</p> <p>3 et cetera. But I have no way of doing that,</p> <p>4 unless spending time to go through and see</p> <p>5 whether I have those things. I do not</p> <p>6 recall seeing any of those CPSC reports you</p> <p>7 were just referencing.</p> <p>8 A. THE WITNESS: Okay.</p> <p>9 Q. MR. SUTTON: So I don't think I</p> <p>10 have them.</p> <p>11 MR. DARIA: Do me a favor --</p> <p>12 sorry to interrupt. Under "Treestand</p> <p>13 Safety," there is a note of CPSC. I don't</p> <p>14 know if that's the same or if it's</p> <p>15 different, but maybe just check that</p> <p>16 before saying that you don't have them.</p> <p>17 MR. SUTTON: Sure.</p> <p>18 BY MR. SUTTON:</p> <p>19 Q. And so the reports under</p> <p>20 "Treestand Safety," this NEISS stuff, and on</p> <p>21 the right -- and under the "NEISS" folder</p> <p>22 there is one thing that says, "CPSC, NEISS</p> <p>23 Online Query," and there are other things</p> <p>24 that talk about the ASTM standards,</p> <p>25 hierarchy controls and et cetera. But what</p>

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Conducted on February 7, 2024

71 (281 to 284)

281	<p>1 he was specifically referencing was -- if</p> <p>2 you pull up the materials received, there</p> <p>3 appear to be three separate CPSC</p> <p>4 publications.</p> <p>5 A. That's correct, yes.</p> <p>6 Q. And I don't see them.</p> <p>7 I can do a search. Let me check</p> <p>8 the search here, maybe I do have them.</p> <p>9 I think that what possibly</p> <p>10 happened is that they translated your file</p> <p>11 into something else.</p> <p>12 A. Yeah. I don't know what happened</p> <p>13 after I sent a share file link of my file.</p> <p>14 Q. All right. Go ahead. Can you</p> <p>15 give me the name.</p> <p>16 A. Yeah. "CPSC Incident Report</p> <p>17 Detail."</p> <p>18 Q. Is there a space?</p> <p>19 A. There is, yes. "CPSC Incident</p> <p>20 Report Details."</p> <p>21 Q. The only thing that's showing with</p> <p>22 CPSC in it is that NEISS data. Those things</p> <p>23 appear to be missing.</p> <p>24 I just did a search for just</p> <p>25 "CPSC" instead of "CPSC Incident."</p>	283	<p>1 highlights in it, yes. How many pages total</p> <p>2 is the document?</p> <p>3 Q. Forty-two.</p> <p>4 A. Correct.</p> <p>5 Q. All right. Now, back to where we</p> <p>6 were. I can't even remember where we were.</p> <p>7 We were talking about suspension trauma, I</p> <p>8 think.</p> <p>9 A. I believe we were.</p> <p>10 Q. Okay.</p> <p>11 Back to suspension trauma. Some</p> <p>12 of those CPSC related incidents that you</p> <p>13 refer to talk about asphyxiation; is that</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. Have you personally investigated</p> <p>17 any claim involving suspension trauma in any</p> <p>18 treestand case?</p> <p>19 A. I have not.</p> <p>20 Q. Have you personally investigated</p> <p>21 any suspension trauma in any non-treestand</p> <p>22 case?</p> <p>23 A. I have not.</p> <p>24 Q. Are you aware of whether or not</p> <p>25 suspension trauma has actually ever been</p>
282	<p>1 Obviously there is some stuff that you</p> <p>2 received, the materials received on 1/11/24.</p> <p>3 And then there's a "CPSC Treestand Query,"</p> <p>4 which if you open there's the "NEISS."</p> <p>5 A. That's correct.</p> <p>6 Q. And then there is a bunch of</p> <p>7 documents of Summit recalls that don't apply</p> <p>8 to the stand, including some complaints with</p> <p>9 CPSC that could be it.</p> <p>10 What are the dates on those</p> <p>11 incident reports?</p> <p>12 A. One incident report is 2019,</p> <p>13 12/17.</p> <p>14 Q. Okay.</p> <p>15 A. And then there is one that's</p> <p>16 different, doesn't have the word "Incident</p> <p>17 Report." It as "Treestand Incidents" in the</p> <p>18 title 2011 through 2022.</p> <p>19 Q. Okay. It appears that those were</p> <p>20 renamed and I may have them.</p> <p>21 It says, received "Month, Year</p> <p>22 11/2022." And it looks like it's a printout</p> <p>23 of some type of treestand incidents and some</p> <p>24 of them are highlighted.</p> <p>25 A. The one I am looking at has</p>	284	<p>1 confirmed with regard to a specific</p> <p>2 treestand?</p> <p>3 A. Do you mean a specific treestand</p> <p>4 or a specific harness?</p> <p>5 Q. To a harness or treestand?</p> <p>6 A. Yeah, I don't have any case</p> <p>7 offhand or know of any exact literature</p> <p>8 discussing that.</p> <p>9 Q. Now, I know that earlier on, 20</p> <p>10 years ago, there were references made to</p> <p>11 some folks that may have suffered suspension</p> <p>12 trauma. But if you look at the data, they</p> <p>13 actually asphyxiated, or maybe they cut</p> <p>14 their legs out, or they -- so that they</p> <p>15 asphyxiated around the chest, when they were</p> <p>16 wearing just a single strap safety belt or</p> <p>17 something like that. It wasn't actually</p> <p>18 suspension trauma.</p> <p>19 So my question to this is: Have</p> <p>20 you yourself done any type of research or</p> <p>21 anything in regard to suspension trauma?</p> <p>22 Are you a suspension trauma expert?</p> <p>23 A. I am not.</p> <p>24 Q. Okay. So we go to the accident</p> <p>25 scene. If we go to the accident scene, you</p>

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72 (285 to 288)

<p style="text-align: right;">285</p> <p>1 were there, right?</p> <p>2 A. That is correct.</p> <p>3 Q. And you recall it was on Sunoco</p> <p>4 property, right?</p> <p>5 A. I recall it was on a refinery</p> <p>6 property, I believe. It may have been</p> <p>7 Sunoco.</p> <p>8 Q. And it was property that was not</p> <p>9 owned by Mr. Vandine, right?</p> <p>10 A. That is my understanding.</p> <p>11 Q. Mr. Vandine did not have authority</p> <p>12 to hunt there, right?</p> <p>13 A. I believe he thought he had the</p> <p>14 ability to hunt there. I don't know how the</p> <p>15 permission or lack of permissions worked.</p> <p>16 Q. Well, did you see any "No</p> <p>17 Trespassing" signs when you were there?</p> <p>18 A. I do not recall seeing "No</p> <p>19 Trespassing," or "No Hunting" signs, but I</p> <p>20 also don't have any documented evidence of</p> <p>21 that.</p> <p>22 Q. Would you agree with me based upon</p> <p>23 what you've come to learn is that</p> <p>24 Mr. Vandine was hunting in a location he did</p> <p>25 not have authority to hunt at, at the time</p>	<p style="text-align: right;">287</p> <p>1 Q. That was a bad question.</p> <p>2 The tree at approximately the</p> <p>3 location of the limb, the diameter was a</p> <p>4 little under nine inches, right?</p> <p>5 A. That's correct.</p> <p>6 Q. And the bottom of the tree at its</p> <p>7 widest portion was a little over nine inches</p> <p>8 in diameter, right?</p> <p>9 A. I have approximately 9.6 inches,</p> <p>10 but yeah, nine inches.</p> <p>11 Q. It was a tree that had a large</p> <p>12 curve in it, true?</p> <p>13 A. The tree had curvature to it. And</p> <p>14 I will incur some of the questions, the tree</p> <p>15 had some lean to it. The -- though the</p> <p>16 instruction manuals discuss lean or</p> <p>17 curvature, those metrics aren't defined as</p> <p>18 far as what is excessive or too much lean.</p> <p>19 Mr. Vandine, he testified that he</p> <p>20 evaluated the lean on the tree and thought</p> <p>21 it was sufficient for him to climb. I will</p> <p>22 say the manual -- the tree diameter, does</p> <p>23 comply with the manual's recommended tree</p> <p>24 diameter.</p> <p>25 Q. How high was the limb?</p>
<p style="text-align: right;">286</p> <p>1 of the accident?</p> <p>2 A. I believe he was hunting on a</p> <p>3 property that he did not have authorization</p> <p>4 to hunt on.</p> <p>5 Q. And that's considered a trespass;</p> <p>6 are you aware of that?</p> <p>7 A. I don't what the legal terms are.</p> <p>8 I can understand, I think there is an</p> <p>9 incident report that has a citation note</p> <p>10 that cites trespass.</p> <p>11 Q. Now, you went to the tree, right?</p> <p>12 A. That's correct.</p> <p>13 Q. Do you know what type of tree it</p> <p>14 was?</p> <p>15 A. I believe it was a cherry tree. A</p> <p>16 wild cherry, folks like to refer to it as.</p> <p>17 Q. And you did some measurements that</p> <p>18 are set forth in your report about the</p> <p>19 circumference of the tree up to that limb,</p> <p>20 correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And the limb is slightly under</p> <p>23 nine inches; is that right?</p> <p>24 A. The diameter of the limb or the</p> <p>25 position of the limb on the tree?</p>	<p style="text-align: right;">288</p> <p>1 A. The limb was approximately</p> <p>2 nine feet above the ground.</p> <p>3 Q. And the limb would have been off</p> <p>4 to his right as he was climbing the tree,</p> <p>5 right?</p> <p>6 A. I believe it would have been to</p> <p>7 his left.</p> <p>8 Q. Do you have a photograph of it in</p> <p>9 your report?</p> <p>10 A. (No audible response.)</p> <p>11 Q. So you looked on page 17, and I</p> <p>12 wasn't at the scene, so the question is, was</p> <p>13 he climbing on this side or was he climbing</p> <p>14 on the other side. I thought he was</p> <p>15 climbing on other side.</p> <p>16 He testified that he was climbing</p> <p>17 towards -- the side over the pond.</p> <p>18 A. Clear as mud. The branch was on</p> <p>19 his left or on his right? I'm going to</p> <p>20 reference another site inspection</p> <p>21 photograph.</p> <p>22 Q. Sure.</p> <p>23 A. Many of the photographs were taken</p> <p>24 standing on the ground facing the tree,</p> <p>25 facing approximately south. The limb was on</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

73 (289 to 292)

289	<p>1 the right-hand side. As I believe he</p> <p>2 states, he's climbing with the treestand</p> <p>3 out, facing towards the water, which would</p> <p>4 put the limb on the left-hand side.</p> <p>5 Q. What was the bark like on the</p> <p>6 tree?</p> <p>7 A. Relatively rough, consistent with</p> <p>8 a cherry tree, as far as -- yeah, I have no</p> <p>9 other comment.</p> <p>10 Q. Cherry trees aren't what you term</p> <p>11 a loose or a chipped bark tree, true?</p> <p>12 A. Cherry trees tend to have kind of</p> <p>13 scaled shaped bark. It's not like a</p> <p>14 Shagbark Hickory, as far as having longer</p> <p>15 sections of protruding bark. I'm also not</p> <p>16 an arborist, so describing tree bark is not</p> <p>17 something I regularly do.</p> <p>18 Q. Fair enough.</p> <p>19 Now, the product was purchased by</p> <p>20 Mr. Vandine in about 2015 in New Jersey from</p> <p>21 Dick's, right?</p> <p>22 A. That's my understanding.</p> <p>23 Q. And it's always used in New</p> <p>24 Jersey, true?</p> <p>25 A. That's my understanding.</p>	291
290	<p>1 Q. Okay. Going back to this video</p> <p>2 that I was sent yesterday, what was this</p> <p>3 video supposed to show?</p> <p>4 A. After reviewing Saunders' report</p> <p>5 and reviewing his testing of a cable affixed</p> <p>6 to the back of the tree with a bent over</p> <p>7 nail and its inability to overcome the</p> <p>8 retention spring in its normal position, I</p> <p>9 wanted to take a look at that same test and</p> <p>10 evaluate its ability to drive the cable</p> <p>11 rearward axially should the retention</p> <p>12 springs be out of position.</p> <p>13 Q. You don't disagree with -- I think</p> <p>14 I asked this before. I apologize if I did.</p> <p>15 You don't disagree with his conclusion that</p> <p>16 pushing it back from a stable point in the</p> <p>17 back of the tree or a nail point in the back</p> <p>18 of the tree, you couldn't put sufficient</p> <p>19 load on the cable to push it -- overcome</p> <p>20 that spring, right?</p> <p>21 A. I think I answered I would tend to</p> <p>22 agree with that statement. I would like to</p> <p>23 review his photos and videos prior to.</p> <p>24 Q. Which Viper was being used?</p> <p>25 A. This was the exemplar, 2010 Summit</p>	292
290	<p>1 Q. And the accident occurred in New</p> <p>2 Jersey, true?</p> <p>3 A. That is also my understanding.</p> <p>4 Q. I want to get back to the video</p> <p>5 test that we did. I just have a few</p> <p>6 follow-up questions that I didn't ask. But</p> <p>7 before we get to it, during the deposition I</p> <p>8 asked Mr. Vandine could he explain to me the</p> <p>9 mechanics of his body through the fall and</p> <p>10 he couldn't do that. Do you have any way to</p> <p>11 do that, as you sit here today?</p> <p>12 A. Do I have any way to explain the</p> <p>13 mechanics --</p> <p>14 Q. Yes.</p> <p>15 A. -- or explain his recollection of</p> <p>16 the mechanics?</p> <p>17 Q. Explain the mechanics.</p> <p>18 A. I mean as far as loading of the</p> <p>19 stand goes, he said he applies his elbows</p> <p>20 and his arms to be upright as he begins to</p> <p>21 lift his feet and then he says he falls to</p> <p>22 the right.</p> <p>23 Q. Other than that, that was</p> <p>24 generally all he was able to tell us, right?</p> <p>25 A. Right.</p>	292
290	<p>1 Viper with the QuickDraw.</p> <p>2 Q. Was there any structural</p> <p>3 difference between this and the subject</p> <p>4 stand?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. I notice that you had several</p> <p>7 exemplars. You had two 2002 Vipers that you</p> <p>8 owned, right?</p> <p>9 A. That's correct.</p> <p>10 Q. And you had this Viper. Did you</p> <p>11 have another one as well?</p> <p>12 A. I did purchase, as an exemplar, a</p> <p>13 new Summit Viper PRO.</p> <p>14 Q. Did you make any type of</p> <p>15 comparison between the 2010 Summit Viper and</p> <p>16 the 2015 Viper?</p> <p>17 A. The only comparison of relevant</p> <p>18 data I had was regarding the retention</p> <p>19 spring retraction forces. And again, that</p> <p>20 was highlighted as a point to show that</p> <p>21 there is some variability within the</p> <p>22 springs. And the 2015 had one spring in</p> <p>23 particular that was -- had a static position</p> <p>24 higher than the rest which resulted in a</p> <p>25 higher retraction force than the other three</p>	292

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Conducted on February 7, 2024

74 (293 to 296)

<p style="text-align: right;">293</p> <p>1 springs.</p> <p>2 Q. If we look at photograph 0004, do</p> <p>3 you see there are other Summit Vipers in the</p> <p>4 background?</p> <p>5 A. Are you referring to the image</p> <p>6 with the caliper in it? I'm sorry, there's</p> <p>7 a couple of photos I haven't seen.</p> <p>8 Q. I do not see a caliper.</p> <p>9 A. 0004. The image of the --</p> <p>10 Q. Yes.</p> <p>11 A. Okay. Yes, there are others in</p> <p>12 the background and those are the Summit</p> <p>13 Vipers from 2002.</p> <p>14 Q. And if you look at other</p> <p>15 photograph which is 005, is that taken in</p> <p>16 the same room?</p> <p>17 A. Yes.</p> <p>18 Q. Because I don't see the Vipers</p> <p>19 back there any longer. And I don't see the</p> <p>20 plug in the wall.</p> <p>21 A. Would you mind looking at my</p> <p>22 screen to make sure we're looking at the</p> <p>23 same photo?</p> <p>24 Q. Yeah. It could just be the</p> <p>25 orientation of the photographer.</p>	<p style="text-align: right;">295</p> <p>1 A. There may have been from previous</p> <p>2 inspections on different days. A lot of</p> <p>3 times the camera can roll over for different</p> <p>4 cases, I guess is what I'm getting at.</p> <p>5 Q. Did you delete any photographs?</p> <p>6 A. I do not recall deleting any</p> <p>7 photographs.</p> <p>8 Q. Did you do any type of testing</p> <p>9 where you placed a load cell on the cable</p> <p>10 assembly to see what type of load you could</p> <p>11 induce on the cable attachment through</p> <p>12 interaction with the tree?</p> <p>13 A. I did not.</p> <p>14 Q. Did you do any type of testing to</p> <p>15 test the amount of deflection that the cable</p> <p>16 would see during ordinary use?</p> <p>17 A. Not any measurable testing.</p> <p>18 Q. Did you do any type of testing to</p> <p>19 see what type of force it would take to push</p> <p>20 back forcibly over and overcome the spring?</p> <p>21 A. I did not.</p> <p>22 Q. Other than this test where we have</p> <p>23 video, did you do any type of test where you</p> <p>24 placed it on a tree while you were inside</p> <p>25 the product standing on the platform with</p>
<p style="text-align: right;">294</p> <p>1 A. This one (indicating)?</p> <p>2 Q. That one, right there.</p> <p>3 A. Yeah, same room, same pole, same</p> <p>4 condition of everything around it.</p> <p>5 Q. Those two photographs were taken</p> <p>6 contemporaneously.</p> <p>7 A. Yes, 2/5/24, 11:07 a.m.</p> <p>8 Q. By the time it came to me, and</p> <p>9 this happens a lot of times, when it comes</p> <p>10 from the attorney's office, it gets scrubbed</p> <p>11 of all that information, so -- I know my</p> <p>12 office has us do that. I'm sure your office</p> <p>13 does as well, so I couldn't tell whether it</p> <p>14 was taken -- but they're approximately</p> <p>15 within minutes of each other?</p> <p>16 A. Yes.</p> <p>17 Q. And the -- how close to the time</p> <p>18 period of the video was it?</p> <p>19 A. Less than 10 minutes.</p> <p>20 Q. Now, the video is -- I assume,</p> <p>21 these were all taken on the same camera?</p> <p>22 A. Correct.</p> <p>23 Q. So the video is 0003, one</p> <p>24 photograph 0004, the other photograph 0005.</p> <p>25 Is there a photograph 1 and 2?</p>	<p style="text-align: right;">296</p> <p>1 the upper portion around you and you tried</p> <p>2 to get the cable to come out?</p> <p>3 A. Please restate the beginning of</p> <p>4 that question. I want to make sure I</p> <p>5 understood it correctly.</p> <p>6 Q. Did you do any type of testing</p> <p>7 where you actually were standing inside the</p> <p>8 upper assembly and tried to get the cable to</p> <p>9 come out for any reason?</p> <p>10 A. I mean, I attempted and actuated</p> <p>11 the springs while standing in the stand, and</p> <p>12 I moved the stand up and down the tree. And</p> <p>13 during those times the cable did not come</p> <p>14 out of the bracket.</p> <p>15 Q. One of the things that is done</p> <p>16 here in this is as we talked about, the yolk</p> <p>17 is placed against the tree and then the back</p> <p>18 is tilted upwards; is that right?</p> <p>19 A. That's correct.</p> <p>20 Q. And that movement of that back bar</p> <p>21 in an upward direction is limited by the</p> <p>22 body being inside of it, right?</p> <p>23 A. To some degree, yes. Depending</p> <p>24 how far the user is standing forward in the</p> <p>25 stand.</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

75 (297 to 300)

297	<p>1 Q. The 2002 Vipers you obtained</p> <p>2 yourself -- and they've been in your</p> <p>3 possession for 20 years or so --</p> <p>4 A. That's correct.</p> <p>5 Q. -- did you get -- you got them</p> <p>6 used; is that right?</p> <p>7 A. No, they were a gift from my</p> <p>8 father. So we -- my brother and I received</p> <p>9 them for Christmas one year. I don't have</p> <p>10 the receipts, and they were presented to us</p> <p>11 not in their original box.</p> <p>12 Q. And I may have written this wrong,</p> <p>13 my note said it was a 2012 exemplar Viper</p> <p>14 and you said 2010? Maybe I wrote it down</p> <p>15 wrong.</p> <p>16 A. I will check on inspection photos</p> <p>17 of it, but I believe it was a '10.</p> <p>18 Q. Okay.</p> <p>19 A. Page 31 references a 2010 Summit</p> <p>20 Viper and I'm looking at a photo right now</p> <p>21 that has a K and a 10.</p> <p>22 Q. I just typed it wrong. Thank you.</p> <p>23 Now, we talked a little bit about</p> <p>24 warnings, and the warnings and instructions</p> <p>25 you were critical of. Have you told me all</p>	299	<p>1 relating to the use of that Viper treestand,</p> <p>2 true?</p> <p>3 A. I believe so.</p> <p>4 Q. Now, your report is a bit</p> <p>5 interesting because you have a summary and a</p> <p>6 conclusion statement. They appear to say</p> <p>7 namely the same thing. And then you have a</p> <p>8 discussion section in between. I believe</p> <p>9 the conclusions are up front and then the</p> <p>10 summaries at the end. Is there really any</p> <p>11 difference between the two, or they -- they</p> <p>12 basically appear to be the same thing over</p> <p>13 and over again.</p> <p>14 A. They are essentially the same</p> <p>15 thing.</p> <p>16 Q. The first conclusion on page 2 of</p> <p>17 your report talks about that you feel that</p> <p>18 "the 2015 Summit Viper climbing treestand is</p> <p>19 defective and dangerous, that the current</p> <p>20 design allows the climbing cable to be</p> <p>21 positioned in a manner that will temporally</p> <p>22 support the weight of the climber, but</p> <p>23 provides a false sense of security as the</p> <p>24 cable and cable stops may not be fully</p> <p>25 positioned and secured within the stand's</p>
298	<p>1 of the criticisms of the warnings and</p> <p>2 instructions that you have?</p> <p>3 A. Of the warnings, yes.</p> <p>4 Q. And the instructions?</p> <p>5 A. Instructions, yes.</p> <p>6 Q. Have you done any type of</p> <p>7 exemplars of any type of warnings of what</p> <p>8 you think the content should have been with</p> <p>9 regard to not placing your hand near the</p> <p>10 trigger assembly?</p> <p>11 A. Whether I had generated what a</p> <p>12 warning decal would look like, or an</p> <p>13 instruction in a manual is that what you're</p> <p>14 referring to?</p> <p>15 Q. Either, or.</p> <p>16 A. No, I have not generated that.</p> <p>17 Q. Are there any other warnings,</p> <p>18 opinions that we haven't -- or instruction</p> <p>19 opinions that we haven't discussed?</p> <p>20 A. I do not believe so.</p> <p>21 Q. And I think we talked about it,</p> <p>22 and I don't want to go over it again, but</p> <p>23 we've gone over all of your knowledge and</p> <p>24 understanding of the facts of any other</p> <p>25 incident that's been claimed against Summit</p>	300	<p>1 cable." Did I read that correctly?</p> <p>2 A. You did.</p> <p>3 Q. And it goes on to say, "The</p> <p>4 temporary securement of the cable provides</p> <p>5 the climber with a false positive. As the</p> <p>6 climber loads and unloads the weight from</p> <p>7 the section of the treestand, the cable and</p> <p>8 cable stops can dislodge from the cable</p> <p>9 bracket resulting in the cable disconnecting</p> <p>10 from the treestand and ultimately</p> <p>11 disconnecting from the tree."</p> <p>12 That's your conclusion with regard</p> <p>13 to that. I think we've already talked about</p> <p>14 that the ability to place this in a perch</p> <p>15 position; is that right?</p> <p>16 A. Yes, the ability for the climbing</p> <p>17 cable to be partially inserted or partially</p> <p>18 rested on the cable bracket. And defective</p> <p>19 and dangerous because that provides the</p> <p>20 owner or the operator of the stand a false</p> <p>21 sense of security, such that they can place</p> <p>22 their weight and their weight be held, but</p> <p>23 upon subsequent unloading and reloading of</p> <p>24 the stand can result in the disconnection.</p> <p>25 Q. Did you yourself in using the 2002</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

76 (301 to 304)

301	<p>1 Viper in all the times that you used it ever</p> <p>2 initially place the cable in a perched</p> <p>3 position?</p> <p>4 A. I don't specifically recall if I</p> <p>5 did. If I did, I had the sliding -- or the</p> <p>6 pivoting cover as a second mechanical means</p> <p>7 of checking to know whether I had the cable</p> <p>8 positioned fully within the bracket.</p> <p>9 Q. And again, you agree with me that</p> <p>10 a vigilant user would be able to see whether</p> <p>11 the cable is appropriately placed in the</p> <p>12 cable bracket, true?</p> <p>13 A. Under a certain level of</p> <p>14 inspection, yes, it can be visually seen</p> <p>15 that it is within the cable bracket.</p> <p>16 Q. Now, we'll get to your alternative</p> <p>17 designs in a bit, but you talk a little bit</p> <p>18 about the use of a couple of your designs</p> <p>19 that you made CAD drawings of. They have,</p> <p>20 for lack of a better term, a cotter pin. Do</p> <p>21 you know what a cotter pin is?</p> <p>22 A. I know what a cotter pin is?</p> <p>23 Q. And that's what is used in those</p> <p>24 designs, right?</p> <p>25 A. (No audible response.)</p>	303
302	<p>1 Q. And if you'd rather, you're using</p> <p>2 a pin that has a U-shaped retainer bracket</p> <p>3 on it?</p> <p>4 A. I believe, yeah, one of the</p> <p>5 renderings represents a U-shape bale, if you</p> <p>6 will. Serves a similar purpose to a cotter</p> <p>7 pin, it's just connected to the pin. It</p> <p>8 isn't separately removable.</p> <p>9 Q. All right. The pin is necessary</p> <p>10 for the use of all of those alternative</p> <p>11 designs, right?</p> <p>12 A. In these proposed designs the pin</p> <p>13 would be necessary, for the first proposed</p> <p>14 design, to keep the cover in a closed</p> <p>15 position as a secondary connection for</p> <p>16 securement for the cover in a closed</p> <p>17 position.</p> <p>18 In the second proposed design the</p> <p>19 pin is the mechanical means that blocks the</p> <p>20 top of the open bracket as well as the</p> <p>21 mechanical means that someone could use the</p> <p>22 pin to mechanically and physically confirm</p> <p>23 that the cable is fully seated.</p> <p>24 Q. In the first design, your design</p> <p>25 requires the person to properly seat the</p>	304

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Transcript of Jarrett Waters
Conducted on February 7, 2024

77 (305 to 308)

<p style="text-align: right;">305</p> <p>1 place, right?</p> <p>2 A. If the cable stop is fully</p> <p>3 inserted into the cable bracket without the</p> <p>4 QuickDraw spring, without the additional</p> <p>5 devices that would help the user determine</p> <p>6 if it's fully seated or not, the cable has a</p> <p>7 tendency to want to stay in its position</p> <p>8 when installed.</p> <p>9 Q. And the only potential way that</p> <p>10 you were able to have it come out is to</p> <p>11 intentionally actuate the trigger and to fix</p> <p>12 the cable to the tree, right?</p> <p>13 A. And in the circumstances where the</p> <p>14 cable wasn't fully positioned or seated</p> <p>15 within the cable bracket.</p> <p>16 Q. Well, that was part of my -- this</p> <p>17 is a followup to my earlier question, if</p> <p>18 it's properly inserted to begin with. So</p> <p>19 let's start with that again.</p> <p>20 If properly inserted into the</p> <p>21 bracket the only way you were able to get it</p> <p>22 to come out is three things: One is to</p> <p>23 first of all actuate the trigger so it</p> <p>24 defeats the QuickDraw spring?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">307</p> <p>1 does retain the cable stop should it be</p> <p>2 fully inserted into the cable stop.</p> <p>3 Q. So in other words, as long as the</p> <p>4 cable doesn't somehow get stuck to the tree</p> <p>5 as you have screwed it here, or a person</p> <p>6 doesn't actuate the trigger in the movement</p> <p>7 that defeats that QuickDraw spring, this</p> <p>8 product works safely?</p> <p>9 MR. DARIA: Objection to form.</p> <p>10 THE WITNESS: The position of</p> <p>11 the cable is not likely to move based on</p> <p>12 its current design.</p> <p>13 BY MR. SUTTON:</p> <p>14 Q. So if those two things don't</p> <p>15 occur, this product works safely, right?</p> <p>16 MR. DARIA: Objection to form.</p> <p>17 THE WITNESS: The cable remains</p> <p>18 fully seated within the cable bracket.</p> <p>19 BY MR. SUTTON:</p> <p>20 Q. Which is what it is designed to</p> <p>21 do, which allows you to safely use the</p> <p>22 product?</p> <p>23 A. It allows you to use the product.</p> <p>24 Q. If either of those things don't</p> <p>25 occur, the cable also remains safely in the</p>
<p style="text-align: right;">306</p> <p>1 Q. Second, secure the cable to the</p> <p>2 back of the tree, so that it can't move,</p> <p>3 right?</p> <p>4 A. That is what I did for the test,</p> <p>5 yes.</p> <p>6 Q. And then third, move the trigger</p> <p>7 switch and grip on the trigger and move the</p> <p>8 trigger to push it out of the cable bracket,</p> <p>9 right?</p> <p>10 A. That third motion wasn't in that</p> <p>11 test. As a result of that, we also did see</p> <p>12 the cable without the upward motion result</p> <p>13 in that perched scenario where it was</p> <p>14 partially -- partially inserted into the</p> <p>15 cable bracket.</p> <p>16 Q. Okay. Removing that last step,</p> <p>17 the first two steps have to occur for that</p> <p>18 cable to come out in its ordinary use,</p> <p>19 right?</p> <p>20 A. That would be true, yes.</p> <p>21 Q. And if either of those two things</p> <p>22 don't occur, the design of this treestand</p> <p>23 keeps that cable within the bracket during</p> <p>24 use, right?</p> <p>25 A. The shape of the cable bracket</p>	<p style="text-align: right;">308</p> <p>1 bracket, true?</p> <p>2 A. Repeat that, please.</p> <p>3 Q. If either of those two things</p> <p>4 doesn't occur, the cable also remains safely</p> <p>5 in the bracket, true?</p> <p>6 A. If it is only seated in the</p> <p>7 bracket upon installation.</p> <p>8 Q. The second paragraph in your</p> <p>9 conclusions talk about engaging or</p> <p>10 disengaging as the climber ascends and</p> <p>11 descends. We've already talked about that,</p> <p>12 right?</p> <p>13 A. That's correct.</p> <p>14 Q. Is there anything in addition you</p> <p>15 need to add that I didn't ask you about?</p> <p>16 A. No, I think we've discussed that.</p> <p>17 Q. Your third conclusion said that,</p> <p>18 "It is our technical opinion that a locking</p> <p>19 device or safety interlock should require a</p> <p>20 separate and intentional user action to</p> <p>21 disengage the lock, and should not be able</p> <p>22 to be inadvertently disengaged during the</p> <p>23 normal foreseen use of this equipment. The</p> <p>24 Summit QuickDraw locking spring can be</p> <p>25 inadvertently disengaged as it is in the</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

78 (309 to 312)

309	<p>1 position of orientation that's often grasped</p> <p>2 by the climber's hand during normal use."</p> <p>3 Did I read that correctly?</p> <p>4 A. You did.</p> <p>5 Q. And this talks, and goes into your</p> <p>6 alternative designs that you set forth at</p> <p>7 the bottom of your report or back of your</p> <p>8 report, right?</p> <p>9 A. I'm not sure that tied directly</p> <p>10 into the alternative designs. The</p> <p>11 alternative designs were created in a way</p> <p>12 that could still retain or keep the</p> <p>13 QuickDraw retention spring should it be</p> <p>14 wanted. Those designs were made to be able</p> <p>15 to still allow the function of the QuickDraw</p> <p>16 spring.</p> <p>17 This particular conclusion is</p> <p>18 discussing that a device referred to as a</p> <p>19 locking device or safety interlock should</p> <p>20 require a separate and different user action</p> <p>21 in order to be disengaged. Whereas, the</p> <p>22 QuickDraw spring is in the area that can be</p> <p>23 grasped and has the potential to be moved</p> <p>24 inadvertently and the safety interlock</p> <p>25 should require a separate and intentional</p>	311	<p>1 Q. Let me ask you this: The</p> <p>2 alternative designs that you propose in your</p> <p>3 report, I take it you have not made them.</p> <p>4 You've drawn them up, but you've not made</p> <p>5 them, right?</p> <p>6 A. Correct. They are scaled models</p> <p>7 and I've made renderings of those models.</p> <p>8 Q. So you've never actually tried to</p> <p>9 install them on a tree, right?</p> <p>10 A. Those designs have never been</p> <p>11 fabricated.</p> <p>12 Q. So the question is, is that if a</p> <p>13 person is up at height like Mr. Vandine does</p> <p>14 and decides for whatever reason I want to</p> <p>15 remove my cable assembly, can those designs</p> <p>16 even be used to do it? Because you're</p> <p>17 taking what is really requiring your body</p> <p>18 and two hands and make it even a more</p> <p>19 difficult action to try to reinstall the</p> <p>20 cable assembly height?</p> <p>21 MR. DARIA: Note my objection to</p> <p>22 the form.</p> <p>23 THE WITNESS: I don't think</p> <p>24 those designs would inhibit somebody's use</p> <p>25 to properly install a climbing cable or</p>
310	<p>1 action.</p> <p>2 Q. And that's what we've already</p> <p>3 discussed at length, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. The next opinion appears to relate</p> <p>6 to the warning label. We've already</p> <p>7 discussed that at length. Is there anything</p> <p>8 else you want to add on?</p> <p>9 I'm sorry. The next opinion, I</p> <p>10 skipped one. The next opinion goes to ASTM</p> <p>11 F2122-13 and that is that in your opinion</p> <p>12 the Summit failed to provide additional</p> <p>13 safety precautions. But in all due respect,</p> <p>14 they did provide both a redundant safety</p> <p>15 device in the QuickDraw spring and a</p> <p>16 harness. You just -- it's your opinion they</p> <p>17 could have been safer, right?</p> <p>18 A. It's my opinion there were things</p> <p>19 that were feasibly, whether through the</p> <p>20 design and economically, that could have</p> <p>21 been incorporated, and that were ones</p> <p>22 incorporated that could have changed the</p> <p>23 outcome of this incident, but also could</p> <p>24 have been easily incorporated into the</p> <p>25 design.</p>	312	<p>1 fully install a climbing cable into the</p> <p>2 climbing bracket.</p> <p>3 BY MR. SUTTON:</p> <p>4 Q. What happens if they lose control</p> <p>5 of the pin and it falls to the ground?</p> <p>6 A. Again, those are no -- those</p> <p>7 renderings are examples of features that</p> <p>8 could easily incorporate a lanyard or</p> <p>9 something that retains the pin to the stand.</p> <p>10 Q. Would you agree with me then, if</p> <p>11 the pin does fall to the ground it would</p> <p>12 render them useless?</p> <p>13 A. If the pin fell to ground, despite</p> <p>14 any lack of lanyard, it would render the pin</p> <p>15 part useless on the second design. And the</p> <p>16 first design you would still have the cover</p> <p>17 that could be pivoted over and block the</p> <p>18 open keyway.</p> <p>19 Q. Okay.</p> <p>20 The next conclusion, is</p> <p>21 multi-paragraphed, but it relates to the</p> <p>22 location of the warning label. Do you see</p> <p>23 that?</p> <p>24 A. That's correct.</p> <p>25 Q. We've already discussed that. Is</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

79 (313 to 316)

313	<p>1 there anything else you want to add?</p> <p>2 A. No.</p> <p>3 Q. The next opinion talks about</p> <p>4 wearing a full-body harness. We've already</p> <p>5 discussed that. Is there anything else you</p> <p>6 want to add?</p> <p>7 A. No, there is not.</p> <p>8 Q. Then the last one is sort of a</p> <p>9 catchall -- the last two are sort of</p> <p>10 catchall, I guess it goes on the fourth page</p> <p>11 too. Is there anything else you want to</p> <p>12 add? Though it appears to be stuff that</p> <p>13 you've been saying throughout the</p> <p>14 deposition. Is there anything else you need</p> <p>15 to add that you haven't told me about in</p> <p>16 those opinions?</p> <p>17 A. The opinions are founded in the --</p> <p>18 kind of in the philosophy of design, and as</p> <p>19 the designer of a product one should</p> <p>20 consider all the foreseeable uses and</p> <p>21 misuses that could exist on a product, and</p> <p>22 that involves doing risk analysis, and</p> <p>23 different failure modes analysis, or</p> <p>24 different tasks that require a designer to</p> <p>25 evaluate and document the process that they</p>	315
314	<p>1 BY MR. SUTTON:</p> <p>2 Q. And in that analysis of a design</p> <p>3 that was designed when the company was a</p> <p>4 different actual legal entity?</p> <p>5 A. That may be the case.</p> <p>6 Q. Okay.</p> <p>7 Go to page 8. You looked at some</p> <p>8 of the reports under NIOSH, that's the</p> <p>9 history of controls that you reference</p> <p>10 later; do you see that?</p> <p>11 A. The Hierarchy of Controls, yes.</p> <p>12 Q. Yes.</p> <p>13 A. Yes.</p> <p>14 Q. And then as you go down there's a</p> <p>15 bunch of stuff in here, many of which we've</p> <p>16 talked about. But then you get to some</p> <p>17 photographs and marketing images from</p> <p>18 Summit's website. I know some of them we</p> <p>19 already talked about. Where are they in</p> <p>20 your file?</p> <p>21 MR. DARIA: Sorry; what were you</p> <p>22 asking for?</p> <p>23 MR. SUTTON: It says,</p> <p>24 "Photographs and Marketing Images from</p> <p>25 Summit's Website." I know you have one</p>	316
314	<p>1 went through in order to realize those risks</p> <p>2 and how they mitigate those risks.</p> <p>3 We don't have any evidence of a</p> <p>4 risk analysis, or a DSMEA, or documents that</p> <p>5 show that a design review was conducted</p> <p>6 regarding the lack of a cover or the open</p> <p>7 keyway, should the product or should the</p> <p>8 climbing cable not be fully inserted into</p> <p>9 the climbing bracket. And had the stand</p> <p>10 been equipped with a safety cover, which</p> <p>11 Mr. Vandine would have had the opportunity</p> <p>12 to close that safety cover and realize that</p> <p>13 the climbing cable was not fully positioned</p> <p>14 within the cable bracket.</p> <p>15 Q. Well, you don't have any</p> <p>16 documents, but you have the testimony of a</p> <p>17 design that's over 20 years old, but you</p> <p>18 have the testimony of Mr. Woller that he did</p> <p>19 all those steps, right?</p> <p>20 MR. DARIA: Objection to form.</p> <p>21 THE WITNESS: I read that in his</p> <p>22 transcript. I have not seen copies of the</p> <p>23 risk analysis or the documentation of</p> <p>24 that.</p> <p>25</p>	316
314	<p>1 that's a folder entitled "Summit Treestand</p> <p>2 Brochures and Instructions."</p> <p>3 THE WITNESS: I have a folder</p> <p>4 entitled "Summit Research."</p> <p>5 BY MR. SUTTON:</p> <p>6 Q. Okay.</p> <p>7 A. There's a folder in there with, a</p> <p>8 subfolder with patents at the bottom -- at</p> <p>9 least the list I'm looking at includes one,</p> <p>10 two, three, four, photographs that appear to</p> <p>11 be from the Summit website.</p> <p>12 Q. Okay. The first one I have, is</p> <p>13 this SU8137; is that right?</p> <p>14 A. Yes, product_viper steel; is that</p> <p>15 it?</p> <p>16 Q. Yep.</p> <p>17 A. Yep.</p> <p>18 Q. That includes the two photographs</p> <p>19 we were talking about already.</p> <p>20 A. That's correct.</p> <p>21 Q. Then it goes on to talk about the</p> <p>22 OL'MAN website. That's the other one we</p> <p>23 were talking about, right?</p> <p>24 A. Correct.</p> <p>25 Q. That's the Multi-Vision product?</p>	316

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Transcript of Jarrett Waters
Conducted on February 7, 2024

80 (317 to 320)

317	<p>1 A. Yes.</p> <p>2 Q. And then it talks about Hawk. I</p> <p>3 didn't see Hawk in there.</p> <p>4 A. I may have copied those</p> <p>5 photographs straight into the report.</p> <p>6 Q. I didn't see the photographs in</p> <p>7 the report.</p> <p>8 A. That was the extent of photographs</p> <p>9 of Hawk's that I put in the report.</p> <p>10 MR. DARIA: What page are you</p> <p>11 referring to?</p> <p>12 THE WITNESS: Thirty-nine.</p> <p>13 BY MR. SUTTON:</p> <p>14 Q. Have you actually seen that Hawk</p> <p>15 product?</p> <p>16 A. I have not physically seen that</p> <p>17 product.</p> <p>18 Q. So basically you just were copying</p> <p>19 photographs from a website and that's the</p> <p>20 extent of it?</p> <p>21 A. Yes. These photographs are from</p> <p>22 their website.</p> <p>23 Q. On page 13, the very last three</p> <p>24 words say, "The climbing cable," and then</p> <p>25 goes onto the next page.</p>	319	<p>1 If you turn to page 15. You</p> <p>2 talked about physical evidence being present</p> <p>3 that tells us that the accident happened</p> <p>4 when the cable assembly was not probably</p> <p>5 placed in the bracket. The lower right</p> <p>6 photograph in figure 12 is what you're</p> <p>7 talking about, right?</p> <p>8 A. That is correct. The material</p> <p>9 that's deformed on the inside of that keyway</p> <p>10 would be consistent with the cable bracket</p> <p>11 or cable stop partially being inserted and</p> <p>12 resting against that keyway under load.</p> <p>13 Q. And on that lower right photograph</p> <p>14 of figure 12 we have a portion of the cable</p> <p>15 bracket seen with a silver X on the left</p> <p>16 side of it and then a mark on the right side</p> <p>17 opposite the silver X that you're talking</p> <p>18 about, right?</p> <p>19 A. That's correct.</p> <p>20 Q. And that demonstrates to you, or</p> <p>21 that damage occurs only when the cable is</p> <p>22 not fully placed into the cable bracket and</p> <p>23 load is placed on the cable sufficiently to</p> <p>24 alter the aluminum, right?</p> <p>25 A. That's correct.</p>
318	<p>1 A. Yes.</p> <p>2 Q. "The climbing cable did exhibit a</p> <p>3 bend not consistent with a natural shape of</p> <p>4 the cable at the interior of the innermost</p> <p>5 cable stop that was positioned within the</p> <p>6 left cable bracket." Did I read that</p> <p>7 correctly?</p> <p>8 A. You did.</p> <p>9 Q. What do you mean by that?</p> <p>10 A. The -- first of all, clarify the</p> <p>11 reference of left and right. I identified</p> <p>12 left and right from the user's hunting</p> <p>13 perspective facing away from the tree as</p> <p>14 opposed to facing the tree.</p> <p>15 That cable did exhibit a kink, or</p> <p>16 a sharper bend where the cable appeared to</p> <p>17 exit the cable bracket on that left side.</p> <p>18 Q. Do you have any of photographs of</p> <p>19 that?</p> <p>20 A. Figure 9 and 10 it is represented,</p> <p>21 however it is not close up.</p> <p>22 Q. I guess I can't see the kink.</p> <p>23 A. It is not severe, and I'm looking</p> <p>24 at it from up.</p> <p>25 Q. Okay.</p>	320	<p>1 Q. You tested the strength of the</p> <p>2 platform springs on Mr. Vandine's treestand</p> <p>3 as well as the seat portion; is that right?</p> <p>4 A. That's correct.</p> <p>5 Q. And Mr. Vandine testified that he</p> <p>6 never would remove it from the right side.</p> <p>7 A. Right.</p> <p>8 Q. You're referring to the</p> <p>9 opposite -- your reference is from the</p> <p>10 person facing away from the tree hunting,</p> <p>11 right?</p> <p>12 A. That's correct.</p> <p>13 Q. So what you found is that on the</p> <p>14 right side in the orientation just</p> <p>15 described, the pounds disengaged of the</p> <p>16 spring were 6 pounds, and on the other side</p> <p>17 it was 9.2 pounds; is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. And one of the things that you</p> <p>20 reference as an alternative design is the</p> <p>21 QuickDraw Pro -- I'm sorry -- the Viper Pro</p> <p>22 design. In the Viper Pro design there is an</p> <p>23 actual handle that can be gripped and opened</p> <p>24 to pull the spring down, right?</p> <p>25 A. That's correct.</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

81 (321 to 324)

321	<p>1 MR. DARIA: Just note my</p> <p>2 objection to the form.</p> <p>3 BY MR. SUTTON:</p> <p>4 Q. It's a lever system, other than a</p> <p>5 spring system?</p> <p>6 A. Yeah. It's a polymer lever, but I</p> <p>7 believe that lever has a torsional spring</p> <p>8 installed around the shaft make it spring</p> <p>9 back to its position.</p> <p>10 Q. So it differs from the Viper</p> <p>11 design in that if force is applied to that</p> <p>12 lever in the direction of, for instance,</p> <p>13 grabbing, or gripping the treestand arm, the</p> <p>14 spring goes down to allow that cable to</p> <p>15 move, right?</p> <p>16 A. That would be correct.</p> <p>17 Q. And Mr. Nelson testified in his</p> <p>18 deposition that because of that, to preclude</p> <p>19 it from bumping on anyone because it's now</p> <p>20 external, they included a pin in that</p> <p>21 design, right?</p> <p>22 A. That's my understanding, yes.</p> <p>23 Q. And what happens if you bump the</p> <p>24 spring? In the bottom of the spring what</p> <p>25 happens if you bump it? Does it go further</p>	323	<p>1 Member Certification Report.</p> <p>2 Q. And you're not here to testify</p> <p>3 that this stand didn't meet any of the</p> <p>4 performance standards, the ASTM tests, are</p> <p>5 you?</p> <p>6 A. Performance specifically relating</p> <p>7 to the static loading and the two times</p> <p>8 loading that we were referring to as</p> <p>9 performance?</p> <p>10 Q. Right.</p> <p>11 A. That's correct.</p> <p>12 Q. And the only real criticism about</p> <p>13 the ASTM appears to be placement of the</p> <p>14 label which you acknowledge has existed</p> <p>15 since 2002 and has been repeatedly certified</p> <p>16 in all kinds of different Viper products,</p> <p>17 right?</p> <p>18 A. That's correct.</p> <p>19 Q. So although you point out that the</p> <p>20 model number that was in the Member</p> <p>21 Certification Report that was produced may</p> <p>22 not be the same as the model number, you</p> <p>23 can't even tell me, as you sit here today,</p> <p>24 whether the model that's referenced in the</p> <p>25 scientific testing lab's signed Member</p>
322	<p>1 into engagement in the Viper design?</p> <p>2 A. If it's bumped upward, yes. It</p> <p>3 would go further into engagement.</p> <p>4 Q. And there is some written things</p> <p>5 in here that you said that the subject stand</p> <p>6 was not properly certified. Do you recall</p> <p>7 that?</p> <p>8 A. Based on the documentation</p> <p>9 provided, the model number stand was not the</p> <p>10 same model number that was certified on the</p> <p>11 MCR report.</p> <p>12 Q. So your only -- you don't think</p> <p>13 that the stand didn't meet any of the</p> <p>14 performance standards, right?</p> <p>15 A. As far as I know, that's correct.</p> <p>16 Q. You've used Viper treestands.</p> <p>17 That's been the same base design for 20</p> <p>18 years. You have no reason to believe that</p> <p>19 they didn't meet the performance standards,</p> <p>20 right?</p> <p>21 A. The model I have, I have not had</p> <p>22 issues with any of the performance. The</p> <p>23 only thing I have to go off of, of whether</p> <p>24 they meet performance standards or not, are</p> <p>25 the Treestand Manufacturers Association's</p>	324	<p>1 Certification Report is different in any way</p> <p>2 whatsoever than the subject stand, right?</p> <p>3 A. From photographs from that Member</p> <p>4 Certification Report I believe as we</p> <p>5 discussed earlier there is a camouflage</p> <p>6 pattern that was different and there might</p> <p>7 have been a different set of backpack straps</p> <p>8 and interlink.</p> <p>9 Q. And tether, umbilical cord as they</p> <p>10 call it?</p> <p>11 A. Correct.</p> <p>12 Q. Those have nothing to do with</p> <p>13 testing, right? The backpack straps aren't</p> <p>14 tested in the TMS or ASTM?</p> <p>15 A. That's correct, they're not</p> <p>16 tested.</p> <p>17 Q. And the camouflage doesn't matter</p> <p>18 in testing, right?</p> <p>19 A. Unless they start to include deer</p> <p>20 in their testing, I don't think so.</p> <p>21 Q. And the umbilical cord isn't</p> <p>22 tested either, right?</p> <p>23 A. To my knowledge, it's not tested.</p> <p>24 Q. And that's the only difference</p> <p>25 that you saw, right?</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

82 (325 to 328)

<p style="text-align: right;">325</p> <p>1 A. From the photographs and the 2 report, that's correct. 3 Q. There was some discussion about 4 the stirrups, whether or not they were 5 included, but you're not of the opinion that 6 has anything to do with this accident, other 7 than just noting them, correct? 8 A. I don't think the stirrups are 9 related in this incident. 10 Q. On page 32 of your report there is 11 some discussion of a rivet? 12 A. That is correct. 13 Q. Are these photographs that you 14 have here in the report, these are of an 15 exemplar 2010 Summit Viper, right? 16 A. That's correct. 17 Q. Did you find any issues whatsoever 18 with the rivets on the subject stand? 19 A. I -- no, I did not. 20 Q. At the back of your report, at the 21 end, you have a section called Summary? 22 A. That's correct. 23 Q. Now, I'm going to give you a fair 24 opportunity, but I've read through these and 25 I've looked through them in comparison to</p>	<p style="text-align: right;">327</p> <p>1 with what are here I do not believe make the 2 stand any more difficult to use and actually 3 it provides the user a way to physically 4 determine that the cable has been fully 5 seated within the cable bracket. 6 Q. Well, in using the subject product 7 attaching it to a tree, you put the cable 8 around the tree, you slide it into the cable 9 bracket, you pull it forward, you can hear 10 an audible click and you can see that it is 11 attached, right? 12 A. You can, yes, you can do that. 13 Q. And then you're ready to go, 14 right? 15 A. Should the cable be fully 16 positioned, yes. 17 Q. And one of the reasons that people 18 like Summit treestands is because of that 19 ability to put them on the tree and be ready 20 to start your hunt, right? 21 A. I would assume so. 22 Q. Especially in low-light 23 conditions, right? 24 A. So the QuickDraw spring does not 25 provide any feature to ensure that the --</p>
<p style="text-align: right;">326</p> <p>1 the conclusions at the beginning of the 2 report and it appears they're the same 3 thing. Is there anything different about 4 them that I missed? 5 A. There may be a few more words in 6 some of the sentences, but the gist of the 7 summary is the same thing that's represented 8 in the conclusions. 9 Q. So now, let's talk about the 10 alternative design and see if we can get 11 closer to conclusion. You would agree with 12 me alternative design is only good if it 13 makes the product safer? 14 A. Please state that again. 15 Q. An alternative design is only good 16 if it makes the product safer, right? 17 A. The purpose of revising or 18 providing alternative design should be to 19 make the product safer, yes. 20 Q. And if the product becomes more 21 difficult to use that may make it less 22 likely to be used, an alternative design, 23 right? 24 A. It depends in what way it becomes 25 more difficult to use. The proposed designs</p>	<p style="text-align: right;">328</p> <p>1 any mechanical feature to ensure that a 2 cable stop is fully seated within the cable 3 bracket. 4 Q. That's not my question. My 5 question is that that's a user optimized 6 feature, that users like to be able to put 7 this on a tree without an additional step. 8 You're aware of that, right? 9 A. I would agree that users want to 10 go as quickly as they can, yes. 11 Q. And all of the proposed additional 12 features that you have, or additional -- 13 require additional steps. For instance, the 14 first one would be moving hatch cover and a 15 secondary pin requires you to open the 16 hatch, it requires you to put the cable in, 17 close the hatch, put the pin in, right? 18 A. Those are the actions, however 19 those actions would take a matter of seconds 20 for the amount of duration that you're to 21 spend in the stand. 22 Q. I'm just saying it takes 23 additional steps. It's not as easy to put 24 on as the design is -- 25 A. It would require --</p>

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Conducted on February 7, 2024

83 (329 to 332)

329	<p>1 MR. DARIA: Let him finish his</p> <p>2 question.</p> <p>3 Objection to the form.</p> <p>4 THE WITNESS: Please repeat the</p> <p>5 question.</p> <p>6 MR. DARIA: Did you finish?</p> <p>7 Sorry. I think you started to answer,</p> <p>8 that's all.</p> <p>9 BY MR. SUTTON:</p> <p>10 Q. My question is simple: It takes</p> <p>11 more steps and therefore it is not as easy</p> <p>12 to put on, you would agree with that, right?</p> <p>13 MR. DARIA: Objection to the</p> <p>14 form.</p> <p>15 THE WITNESS: It takes more</p> <p>16 steps, yes, but those steps are steps that</p> <p>17 the user can use to verify that the cable</p> <p>18 is fully installed.</p> <p>19 BY MR. SUTTON:</p> <p>20 Q. Which in the present design the</p> <p>21 user can just physically look, right?</p> <p>22 A. If they looked long enough and</p> <p>23 hard enough, yes, they can look at it and</p> <p>24 determine that the cable was positioned.</p> <p>25 Q. With all due respect, how long do</p>	331	<p>1 and look at it, you can visually determine</p> <p>2 whether it's seated or not. That photo</p> <p>3 represents something that's visually</p> <p>4 difficult to determine.</p> <p>5 Q. The photograph that you took of</p> <p>6 the person that's standing in the middle of</p> <p>7 the stand which is not how Summit shows you</p> <p>8 to attach it to a tree, right?</p> <p>9 A. From the operator position within</p> <p>10 the stand, yes.</p> <p>11 Q. But Summit shows you in the video</p> <p>12 and shows you on the instruction manual to</p> <p>13 do it from the side, right?</p> <p>14 A. That's what the instruction manual</p> <p>15 says, yes.</p> <p>16 Q. And Figure 33, on page 35, very</p> <p>17 easily shows the top view, which can be</p> <p>18 easily determined whether or not the cable</p> <p>19 is attached?</p> <p>20 A. I think we'll argue whether people</p> <p>21 can easily determine things in a quick look.</p> <p>22 If you look at that long enough and get</p> <p>23 close enough, yes, you can determine.</p> <p>24 Q. In the design that you have, which</p> <p>25 is the design of the -- which is your</p>
330	<p>1 you have to look at the side of it to make</p> <p>2 sure it's seated in front of the QuickDraw</p> <p>3 spring?</p> <p>4 A. In that photo right there, not</p> <p>5 very long.</p> <p>6 Q. You said, "In that photo right</p> <p>7 there," you're referring to page 6 of the</p> <p>8 manual?</p> <p>9 A. Okay. Figure 32, on page 34 of</p> <p>10 the report, is an example of a cable stop</p> <p>11 that is partially seated versus a cable stop</p> <p>12 that is fully seated. And in that condition</p> <p>13 it is quite difficult to discern easily that</p> <p>14 the cable is fully seated. If you sit and</p> <p>15 stare at it, you can determine that it's</p> <p>16 fully positioned.</p> <p>17 Q. Sit and stare at it. If you lean</p> <p>18 over and look at it from the side you could</p> <p>19 easily determine. It takes you less than</p> <p>20 two seconds, right?</p> <p>21 A. About the same time to close the</p> <p>22 cover and insert a pin.</p> <p>23 Q. What I'm saying is that you can</p> <p>24 visually see it very easily, right?</p> <p>25 A. Not very easily. If you sit there</p>	332	<p>1 proposed alternative design on page 40 --</p> <p>2 A. Yes.</p> <p>3 Q. -- in this design that you have on</p> <p>4 this -- on this product, if the gate is not</p> <p>5 closed, is there anything that prevents,</p> <p>6 other than the design of the cable and the</p> <p>7 cable bracket itself that prevents that</p> <p>8 cable from moving backwards?</p> <p>9 A. Repeat that, please.</p> <p>10 Q. If that cover is not closed, is</p> <p>11 there anything in that design as you've</p> <p>12 drawn here that prevents that cable from</p> <p>13 moving backwards?</p> <p>14 A. As drawn in that photo, the cable</p> <p>15 can move rearwards without risking the</p> <p>16 ability for it to exit the pathway or exit</p> <p>17 the bracket. And I do note in the report</p> <p>18 that those drawings could be used with the</p> <p>19 QuickDraw retention spring should it want to</p> <p>20 be retained.</p> <p>21 Q. Well, first of all, you didn't</p> <p>22 actually physically draw it in these with</p> <p>23 the QuickDraw spring in it, right?</p> <p>24 A. That's correct.</p> <p>25 Q. And you didn't actually physically</p>

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84 (333 to 336)

333	<p>1 make it to determine whether or not that</p> <p>2 made it much more difficult because of the</p> <p>3 operation of the QuickDraw spring to</p> <p>4 actually enclose this cover, right?</p> <p>5 A. The cover is on the external or</p> <p>6 above the side of the cable bracket. That</p> <p>7 QuickDraw spring doesn't interfere with</p> <p>8 anything above the cable bracket.</p> <p>9 Q. The way it's drawn it's on the top</p> <p>10 and the bottom of the cable, isn't it? Or</p> <p>11 is it just an L shape?</p> <p>12 A. The removable cover itself is just</p> <p>13 an L shape.</p> <p>14 Q. Okay. First of all, if it's not</p> <p>15 closed, it doesn't add any safety at all,</p> <p>16 right?</p> <p>17 MR. DARIA: Objection to the</p> <p>18 form.</p> <p>19 THE WITNESS: If the cover is</p> <p>20 not closed, the cable could still be</p> <p>21 partially inserted or have the ability to</p> <p>22 move axially within the bracket.</p> <p>23 BY MR. SUTTON:</p> <p>24 Q. Secondly, if the cable is open and</p> <p>25 you're carrying it through the woods, and it</p>	335	<p>1 caught in anything, right?</p> <p>2 A. Potentially.</p> <p>3 Q. Okay.</p> <p>4 Now, you did not draw up in any of</p> <p>5 these any type of pin that is actually</p> <p>6 physically attached to the stand, right?</p> <p>7 A. I did not represent a lanyard that</p> <p>8 tied the pin to the stand in these drawings.</p> <p>9 Q. Have you ever used a stand that</p> <p>10 had a pin like this?</p> <p>11 A. A pin and a lanyard?</p> <p>12 Q. Yes.</p> <p>13 A. Yes, the Treewalker.</p> <p>14 Q. And did you have to replace it</p> <p>15 after a while?</p> <p>16 A. No, it had a lanyard that attached</p> <p>17 it to the stand.</p> <p>18 Q. Now, if it has a lanyard that it</p> <p>19 attached and it becomes damaged, does that</p> <p>20 affect its ability to use it?</p> <p>21 A. If the lanyard -- sorry, repeat.</p> <p>22 If the lanyard becomes damaged?</p> <p>23 Q. No, if the pin becomes damaged.</p> <p>24 A. If the pin became damaged, it</p> <p>25 could become difficult to insert.</p>
334	<p>1 hits something and bends it, you've defeated</p> <p>2 the whole purpose of that, right?</p> <p>3 A. If somebody is carrying the</p> <p>4 treestand through the woods and snags the</p> <p>5 QuickDraw retention spring on something,</p> <p>6 they could bend it out of shape and defeat</p> <p>7 its purpose.</p> <p>8 Q. We've been going so long because</p> <p>9 you won't actually answer the question. Did</p> <p>10 I ask you a question about the QuickDraw</p> <p>11 spring?</p> <p>12 A. You did not. I'm just offering</p> <p>13 suggestions. All things are susceptible to</p> <p>14 damage.</p> <p>15 Q. My question is on your design and</p> <p>16 you have a moveable hatch cover and the</p> <p>17 moveable hatch cover is capable of being</p> <p>18 bent because it's basically an outside wing</p> <p>19 on the end of a stand that you're carrying</p> <p>20 through the woods, right?</p> <p>21 A. If it's not in positioned and</p> <p>22 closed, yes.</p> <p>23 Q. The QuickDraw spring, however, is</p> <p>24 behind the arm itself. It doesn't extend on</p> <p>25 the outside, so it's less likely to be</p>	336	<p>1 Q. I want you to turn back at exhibit</p> <p>2 is it 3, page 38. Your report, page 38.</p> <p>3 Now, here you are suggesting that</p> <p>4 this OL'MAN treestand design is one</p> <p>5 potential alternative design to the subject</p> <p>6 treestand, right?</p> <p>7 A. That is correct.</p> <p>8 Q. This is the Multi-Vision product,</p> <p>9 right?</p> <p>10 A. Correct.</p> <p>11 Q. You realize, do you not, that you</p> <p>12 signed a report in Lee versus Millennium</p> <p>13 Outdoors in which you stated that the</p> <p>14 Multi-Vision treestand was defective and</p> <p>15 dangerous?</p> <p>16 A. I don't recall authoring that</p> <p>17 report. I may have been a technical</p> <p>18 reviewer on that report, but I did not</p> <p>19 author that report.</p> <p>20 Q. But when you sign it, aren't you</p> <p>21 signing that you've reviewed it, and read</p> <p>22 it, and agreed to it? Isn't that the whole</p> <p>23 purpose of having somebody sign it?</p> <p>24 A. The individual that signs it is a</p> <p>25 technical reviewer. Those are not their</p>

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85 (337 to 340)

<p style="text-align: right;">337</p> <p>1 opinions.</p> <p>2 Q. So you're saying that on behalf of</p> <p>3 Wolf Forensic and Design Engineering or</p> <p>4 whatever it's currently called --</p> <p>5 A. True.</p> <p>6 Q. -- that if you sign a report, as a</p> <p>7 reviewer, you are not saying that you agree</p> <p>8 to the opinions? That's not the purpose of</p> <p>9 signing the report?</p> <p>10 A. Those are not your authored</p> <p>11 opinions. The author of the report, it's</p> <p>12 their opinion.</p> <p>13 Q. So if I have a case called Lee</p> <p>14 versus Millennium Outdoors that you had</p> <p>15 signed the document of a report saying that</p> <p>16 this design that you're now proposing as</p> <p>17 alternative in this case is defective and</p> <p>18 dangerous, you now say you don't agree to</p> <p>19 that?</p> <p>20 A. The opinions authored in that</p> <p>21 report were not my opinions.</p> <p>22 Q. Well, they --</p> <p>23 A. They're the opinions of</p> <p>24 Mr. Dickinson.</p> <p>25 Q. They were issued by Wolf Forensics</p>	<p style="text-align: right;">339</p> <p>1 the opinions.</p> <p>2 MR. DARIA: Objection to form.</p> <p>3 THE WITNESS: I'm saying they're</p> <p>4 not my opinion.</p> <p>5 BY MR. SUTTON:</p> <p>6 Q. Are there any reports that have</p> <p>7 been issued with regard to any cases out</p> <p>8 there, that you have signed, that you</p> <p>9 disagree with any opinions?</p> <p>10 A. I'm not aware of those. The</p> <p>11 opinions are the opinions of the author.</p> <p>12 And if I recall from this particular -- and</p> <p>13 without seeing that report in front of me</p> <p>14 and knowing what Mr. Dickinson said, I</p> <p>15 believe he was referring to the lack of</p> <p>16 inspection of the cable as far as the</p> <p>17 effects of corrosion because it was within a</p> <p>18 polymer tube, not necessarily the attachment</p> <p>19 point of the climbing cable into the tube.</p> <p>20 Q. You do remember the case. You do</p> <p>21 remember that Mr. Dickinson was saying that</p> <p>22 this attachment was dangerous because a</p> <p>23 person couldn't see whether or not it</p> <p>24 corroded?</p> <p>25 A. I believe, and again, I don't have</p>
<p style="text-align: right;">338</p> <p>1 and Design Engineering, that's your firm,</p> <p>2 right?</p> <p>3 A. That's correct. That's who I work</p> <p>4 for.</p> <p>5 Q. And Mr. Dickinson was your boss,</p> <p>6 right?</p> <p>7 A. He's a colleague.</p> <p>8 Q. And isn't he an owner of Wolf?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Isn't he a person that provides</p> <p>11 reports and supportive service on behalf of</p> <p>12 Wolf?</p> <p>13 A. Yes, he does.</p> <p>14 Q. And part of your protocol to make</p> <p>15 sure that a report has been peer reviewed</p> <p>16 and is appropriate under "Daubert" is to</p> <p>17 have somebody review it and sign it as well,</p> <p>18 right?</p> <p>19 A. Our protocol is for somebody to</p> <p>20 review the report, yes.</p> <p>21 Q. You are saying here, under oath,</p> <p>22 that there are reports out there that you've</p> <p>23 signed that you don't agree with the</p> <p>24 opinions on?</p> <p>25 A. I am not saying I disagree with</p>	<p style="text-align: right;">340</p> <p>1 the report in front of me, I believe his</p> <p>2 report was discussing that the cover over</p> <p>3 the cable prevented its inspection.</p> <p>4 Q. You are aware, are you not, that</p> <p>5 in the case Walker versus Alliance Outdoor</p> <p>6 Products, Edward versus Alliance Outdoor</p> <p>7 Products, and Clayton versus Alliance</p> <p>8 Outdoor Products you signed a report in</p> <p>9 which the proposed alternative design to the</p> <p>10 product that was used in that case, a</p> <p>11 climbing treestand by X-Stand was Summit</p> <p>12 Viper?</p> <p>13 A. I don't recall if it was a</p> <p>14 proposed alternative design. There was an</p> <p>15 analysis of the tension or tensile strength</p> <p>16 of the climbing cable.</p> <p>17 Q. It was the only attachment method</p> <p>18 that you referenced in your report. And you</p> <p>19 did testing, and I know you did testing</p> <p>20 because you were the one that did it.</p> <p>21 A. I'm not arguing that I did</p> <p>22 testing. I know I did testing on my 2002</p> <p>23 Summit Viper stand.</p> <p>24 Q. And your opinions in that case was</p> <p>25 that the Summit Viper treestand was a safe</p>

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<p style="text-align: right;">341</p> <p>1 alternative design to that X-Stand, right?</p> <p>2 MR. DARIA: Objection to the</p> <p>3 form.</p> <p>4 THE WITNESS: I believe the</p> <p>5 reports are referencing the tensile</p> <p>6 strength of the climbing cable as an</p> <p>7 alternative to what X-Stand provided.</p> <p>8 BY MR. SUTTON:</p> <p>9 Q. Well, wait a minute. You're not</p> <p>10 saying I can propose a new alternative</p> <p>11 design and it may be safer in one aspect but</p> <p>12 be much more dangerous in some other aspect,</p> <p>13 but I still think it's a good alternative</p> <p>14 design? You have to look at how the product</p> <p>15 works throughout for its entire application</p> <p>16 to determine whether it's a safer</p> <p>17 alternative design, right?</p> <p>18 MR. DARIA: Objection to form.</p> <p>19 THE WITNESS: The Multi-Vision</p> <p>20 stand was included because of its</p> <p>21 attachment method through the tube, which</p> <p>22 would prevent the user from being able to</p> <p>23 partially secure the climbing cable. The</p> <p>24 other aspects of that design were not</p> <p>25 evaluated and not considered as part of</p>	<p style="text-align: right;">343</p> <p>1 actually manipulated, right?</p> <p>2 A. That's correct.</p> <p>3 Q. Because I know that in the</p> <p>4 photograph that you show on page 39 there</p> <p>5 is, for instance, a knob for the retention</p> <p>6 of it that you can see in that photograph</p> <p>7 that appears to come off the top. Do you</p> <p>8 see that?</p> <p>9 A. Page again, please?</p> <p>10 Q. Thirty-nine.</p> <p>11 A. Yes, that's correct.</p> <p>12 Q. That is in a location where if</p> <p>13 somebody is going to be using their hand and</p> <p>14 elbows may make it difficult for them to use</p> <p>15 it in the stand in the same manner in which</p> <p>16 Mr. Vandine said he used the subject stand,</p> <p>17 right?</p> <p>18 A. I don't believe it would because</p> <p>19 hands and elbows would be interacting with</p> <p>20 the remainder of the upright arm and his</p> <p>21 hands would likely be maybe at or near that,</p> <p>22 but below that bracket.</p> <p>23 Q. It also appears to only be</p> <p>24 adjustable on one side; do you see that?</p> <p>25 A. The photo on the left appears to</p>
<p style="text-align: right;">342</p> <p>1 their proposal in this report. It was</p> <p>2 simply an alternative method how a cable</p> <p>3 attaches to a treestand.</p> <p>4 BY MR. SUTTON:</p> <p>5 Q. In fact, the same issue that you</p> <p>6 had that you and Mr. Dickinson signed a</p> <p>7 report saying that the Multi-Vision was</p> <p>8 detective, also exists in the Treewalker</p> <p>9 climbing stand because it's also connected</p> <p>10 and contained within a polymer tube, right?</p> <p>11 MR. DARIA: Objection to form.</p> <p>12 THE WITNESS: That would be</p> <p>13 correct. That cable is difficult to</p> <p>14 inspect or not possible to inspect.</p> <p>15 BY MR. SUTTON:</p> <p>16 Q. And you yourself use a 2002 Viper</p> <p>17 stand, two of them. Have you had any issues</p> <p>18 with corrosion at all with the Summit</p> <p>19 treestand?</p> <p>20 A. They both are equipped with</p> <p>21 replacement cables at this point, so I don't</p> <p>22 have the original existing cables from 2002.</p> <p>23 Q. Okay. The Hawk climbing treestand</p> <p>24 you have included in here has an attachment</p> <p>25 method that you haven't specifically</p>	<p style="text-align: right;">344</p> <p>1 have adjustments on both sides.</p> <p>2 Q. Your eyes are better than mine.</p> <p>3 It doesn't look like it to me, but okay.</p> <p>4 The Multi-Vision and the</p> <p>5 TreeStalker appear to only have -- if you</p> <p>6 permanently attached on one side; is that</p> <p>7 correct?</p> <p>8 A. That's correct. They're</p> <p>9 permanently affixed on one side.</p> <p>10 Q. Do you have any criticisms or</p> <p>11 disagreements with Mr. Saunders and his</p> <p>12 report?</p> <p>13 A. I -- the primary disagreement I</p> <p>14 have with his report is he refers to --</p> <p>15 comments on misuse of a treestand which was</p> <p>16 not foreseeable by Summit because of the</p> <p>17 warnings and the instruction manual. The</p> <p>18 fundamental misuse or the primary misuse of</p> <p>19 a treestand should be considered by the</p> <p>20 designer and if there are feasible economic</p> <p>21 design alternatives, they should be</p> <p>22 considered.</p> <p>23 Q. Anything else?</p> <p>24 A. Off the top of my head, no.</p> <p>25 Q. What about Mr. Smith?</p>

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87 (345 to 348)

<p style="text-align: right;">345</p> <p>1 A. If I recall, Mr. Smith's report 2 was primarily concerned with data existing 3 in the -- data existing regarding the use of 4 harnesses. And I believe that data does 5 show that harness use is not a hundred 6 percent and therefore the industry is aware 7 that not every hunter uses a harness while 8 they climb a tree. 9 Q. Anything else? 10 A. Not that I recall. 11 Q. Would you agree with me that had 12 Mr. Vandine followed all of the instructions 13 and warnings contained in the written and 14 video instructions and warnings provided by 15 some of the text that wouldn't have 16 occurred? 17 A. I believe there was still a 18 potential for the cable to disconnect should 19 it be partially inserted into the cable 20 bracket. 21 Q. But we're talking about the way 22 this accident occurred. Would you agree 23 with me that if he had followed the 24 instructions and warnings that were written 25 and contained in the video provided by</p>	<p style="text-align: right;">347</p> <p>1 to review my notes, I'm just about done. 2 - - - 3 (Recess.) 4 - - - 5 BY MR. SUTTON: 6 Q. Page 39. This is a Treewalker 7 treestand; is that right? 8 A. That's correct. 9 Q. Is that one of your stands? 10 A. It is. 11 Q. This Hawk Ultra-Lite -- the 12 treestand we're here talking about today is 13 a 2015 model year product, right? 14 A. That's correct. 15 Q. This Hawk Ultra-Lite climbing 16 treestand, do you know when it first came 17 out? 18 A. I do not know. 19 Q. Do you know if it was even 20 available in 2015? 21 A. I do not know that either. 22 Q. Would you agree with me that 23 Mr. Vandine failed to follow numerous and 24 multiple instructions and warnings contained 25 and provided by Summit with its products in</p>
<p style="text-align: right;">346</p> <p>1 Summit, that this incident, the way it 2 occurred would not have occurred? 3 MR. DARIA: Objection to form. 4 THE WITNESS: If the -- if the 5 instructions would have been adhered to 6 the letter, it is likely that the climbing 7 cable -- strike that. 8 If the instructions had been 9 adhered to the letter, Mr. Vandine likely 10 wouldn't have been injured when he fell 11 and hit the ground. 12 BY MR. SUTTON: 13 Q. And would you agree that if he'd 14 followed the written and video instructions 15 provided by Summit that Mr. Vandine also 16 likely would not have fallen at all? 17 A. If the -- if he had inspected and 18 insured that the cable was fully seated as 19 those instructions outlined per those 20 photographs, which Mr. Vandine stated he did 21 not review, the climbing cable would likely 22 not have become partially seated and then 23 therefore become detached upon his next 24 loading of the treestand. 25 Q. If you'll just give me few minutes</p>	<p style="text-align: right;">348</p> <p>1 using the products? 2 MR. DARIA: Objection to form. 3 THE WITNESS: I would agree that 4 Mr. Vandine failed to follow the 5 instructions in the written instructions 6 regarding the use of the tree -- or the 7 fall arrest harness and the instruction 8 regarding the disconnection of the cable 9 at height. 10 It's Mr. Vandine's testimony 11 that he did not review those instructions, 12 and he also testified from his experience 13 and his understanding that he wasn't aware 14 that those things were restricted or 15 warned against in the instructions. 16 BY MR. SUTTON: 17 Q. Well, if you don't read them you 18 can't be aware of whether or not they 19 contain warnings, right? 20 A. It's difficult to know things that 21 you don't or haven't looked at or read. 22 Q. Which is why as an engineer, 23 knowing that there's an inherent danger in 24 the use of treestands, want all treestand 25 users to use and follow the instructions and</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

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349	<p>1 warnings, true?</p> <p>2 A. It is recommended that a user or</p> <p>3 operator of a piece of equipment understand</p> <p>4 the written instructions for that piece of</p> <p>5 equipment. Mr. Vandine, as he testified,</p> <p>6 felt that his experience and use of the</p> <p>7 treestand had given him a good foundation on</p> <p>8 understanding the use of the treestand and</p> <p>9 what its capabilities were.</p> <p>10 Q. But nevertheless, it's your</p> <p>11 opinion as an engineer, familiar with the</p> <p>12 use of treestands because you've used them,</p> <p>13 that a user should read and follow the</p> <p>14 instructions that come with them since they</p> <p>15 have such inherent dangers?</p> <p>16 MR. DARIA: Objection; asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: The user should</p> <p>19 follow the directions that are provided</p> <p>20 with the treestand.</p> <p>21 BY MR. SUTTON:</p> <p>22 Q. Now, one last little thing. There</p> <p>23 was something in your file materials I noted</p> <p>24 that talked about the addition of a 2019</p> <p>25 footrest?</p>	351	<p>1 the Summit instructions to attach it?</p> <p>2 A. I do not know, as I sit here, if</p> <p>3 he followed the Summit instructions to</p> <p>4 attach that.</p> <p>5 MR. SUTTON: I have no further</p> <p>6 questions at this time. Thank you very</p> <p>7 much.</p> <p>8 MR. DARIA: Just a couple,</p> <p>9 Mr. Waters.</p> <p>10 - - -</p> <p>11 EXAMINATION</p> <p>12 - - -</p> <p>13 BY MR. DARIA:</p> <p>14 Q. Starting with that point, this</p> <p>15 footrest. Does that in any way affect or</p> <p>16 alter the opinions you've rendered in this</p> <p>17 case, or have anything to do with the</p> <p>18 attachment point that we've been talking</p> <p>19 about?</p> <p>20 A. No, it does not.</p> <p>21 Q. Mr. Waters, we went through your</p> <p>22 report dated November 22nd of 2023. All of</p> <p>23 the opinions contained in that report, were</p> <p>24 they stated to a reasonable degree of</p> <p>25 engineering certainty?</p>
350	<p>1 A. Addition of a 2019?</p> <p>2 Q. There is something in your folder</p> <p>3 that says 2019 Summit footrest. I don't</p> <p>4 remember where it was.</p> <p>5 A. Under Summit Research 2019</p> <p>6 accessory footrest?</p> <p>7 Q. Yes. Did Mr. Vandine attach a</p> <p>8 footrest to the subject stand?</p> <p>9 A. I know there was a footrest</p> <p>10 attached to the stand.</p> <p>11 Q. Did he drill holes in the stand in</p> <p>12 order to do that?</p> <p>13 A. It would have to be holes placed</p> <p>14 in the footrest to attach the bumpers. Go</p> <p>15 back to inspection photos.</p> <p>16 Q. Did he drill holes in the outside</p> <p>17 tube of the treestand to attach it; do you</p> <p>18 recall?</p> <p>19 A. I don't recall, offhand. I'm</p> <p>20 running through inspection photos real fast</p> <p>21 to look.</p> <p>22 There is a footrest installed on</p> <p>23 his stand and it appears to be attached to</p> <p>24 the stand via two screws.</p> <p>25 Q. Do you know whether he followed</p>	352	<p>1 A. Yes, they were.</p> <p>2 Q. Despite the questions that you</p> <p>3 were asked today with regard to the facts,</p> <p>4 the opinions, and conclusions you reached in</p> <p>5 that report, do you maintain those facts,</p> <p>6 opinions, and conclusions?</p> <p>7 A. Yes, I do.</p> <p>8 Q. You were asked whether you have</p> <p>9 any criticisms of Mr. Saunders' and</p> <p>10 Mr. Smith's reports, but were not given a</p> <p>11 copy of those reports. And I just want to</p> <p>12 be clear, to the extent that your opinions</p> <p>13 differ from their opinions, is it fair to</p> <p>14 say that you disagree in those respects?</p> <p>15 A. Yes, it would be.</p> <p>16 Q. All of the opinions and testimony</p> <p>17 you have provided today, has that been given</p> <p>18 to a reasonable degree of engineering and</p> <p>19 professional certainty?</p> <p>20 A. Yes, they have.</p> <p>21 Q. In reaching your opinions and</p> <p>22 conclusions in this case, did you follow</p> <p>23 your usual and regular methodology?</p> <p>24 A. Yes, I did.</p> <p>25 Q. Based upon your experience, your</p>

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Transcript of Jarrett Waters
Conducted on February 7, 2024

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<p style="text-align: right;">353</p> <p>1 training, and your education, is that a</p> <p>2 methodology that is generally used and</p> <p>3 followed and accepted by other engineers in</p> <p>4 your field?</p> <p>5 A. Yes, it is.</p> <p>6 Q. And that methodology, reviewing</p> <p>7 evidence, testimony, principles of</p> <p>8 engineering and other things set forth in</p> <p>9 that report of yours, is that the</p> <p>10 methodology that you used?</p> <p>11 A. Yes.</p> <p>12 Q. And in addition, did you utilize</p> <p>13 your experience, your education, and your</p> <p>14 knowledge in the field of hunting in forming</p> <p>15 your opinion?</p> <p>16 A. Yes, in forming my opinions.</p> <p>17 Q. And you were asked today about</p> <p>18 testing a number of times. Is there any</p> <p>19 additional testing that you needed to do to</p> <p>20 reach the opinions and conclusions set forth</p> <p>21 in your report?</p> <p>22 A. No, there is no additional</p> <p>23 testing.</p> <p>24 Q. And to the extent you've provided</p> <p>25 opinions today, is there any additional</p>	<p style="text-align: right;">355</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I hereby certify that the</p> <p>4 proceedings and evidence are contained</p> <p>5 fully and accurately in the notes taken by</p> <p>6 me in the above cause and that this is a</p> <p>7 correct transcription of the same.</p> <p>8 Review was requested.</p> <p>9</p> <p>10</p> <p>11 <i>Lisa Neal</i></p> <p>12 Lisa Claud Neal, RPR</p> <p>13</p> <p>14 - - -</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">354</p> <p>1 testing that you need to do to render those</p> <p>2 opinions and conclusions?</p> <p>3 A. No.</p> <p>4 MR. DARIA: That's all I wanted</p> <p>5 to ask. Thank you.</p> <p>6 (At 3:58 p.m., proceedings were</p> <p>7 concluded.)</p> <p>8 - - -</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN VANDINE and RENEE VANDINE,)	
)	CIVIL ACTION NO. 2:23-cv-00027
Plaintiffs,)	
vs.)	
)	
SUMMIT TREESTANDS, LLC, and)	
DICK'S SPORTING GOODS, INC.)	
)	
Defendants.)	
)	

AFFIDAVIT OF DOUGLAS J. STIPANOVICH

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) ss.

DOUGLAS J. STIPANOVICH, being first duly sworn upon his oath at law, deposes and says:

1. I am over eighteen years of age.
2. I have personal knowledge concerning the statements and information contained in this Affidavit.
3. I am competent to testify to the matters contained in this Affidavit.
4. I am an authorized representative of Dick's Sporting Goods, Inc. (hereinafter "DSG") and I am authorized to sign this Affidavit on behalf of DSG. I currently hold the position of Senior Corporate Counsel for DSG.
5. I state that the factual information and statements made herein are true and correct to the best of my knowledge, information, and belief, and if called as a witness to testify, I could and would testify to all of the following under oath.

6. Based on the pleadings and discovery conducted in this matter, the subject treestand has been identified as a 2015 model year Viper Climbing Treestand manufactured and/or distributed by Summit Treestands, LLC.

7. The subject model treestand was purchased by DSG from Co-Defendant Summit Treestands, LLC, the distributor and/or manufacturer of the subject treestand.

8. Summit Treestands, LLC is a named party in this matter and is actively defending this case.

9. At no time did DSG have any involvement in or with the design, manufacture, assembly, packing, or packaging of any treestands manufactured by Summit Treestands, LLC.

10. At no time did DSG have any involvement in or with the design, manufacture, assembly, packing, or packaging of the subject treestand that has been identified as a 2015 model year Viper Climbing Treestand, which was manufactured and/or distributed by Summit Treestands, LLC.

11. At no time did DSG have any involvement with the production of any treestands distributed by Summit Treestands, LLC, including the subject 2015 model year Viper Climbing Treestand at issue in this case.

12. The name Dick's Sporting Goods, Inc. has never been placed on any treestand, packaging, packing, warnings and instructions, or display pieces on any of the treestands manufactured and/or distributed by Summit Treestands, LLC at any time.

13. The subject climbing treestand, as with all other treestands distributed by Summit Treestands, LLC and sold at DSG, was to be sealed in a cardboard box before it was shipped to DSG for sale at its store and DSG does not alter products received from Vendors.

14. DSG had no knowledge that there was any alleged defect with the subject 2015 Viper Climbing Treestand at issue in this case.

15. Assuming arguendo that there was an alleged defect with the subject 2015 Viper Climbing Treestand at issue in this case, DSG had no involvement with the creation of any such alleged defect.

FURTHER AFFIANT SAYETH NOT

Dick's Sporting Goods, Inc.



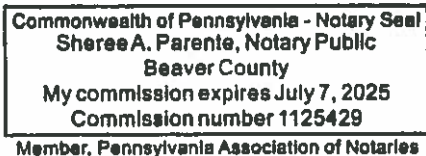
By: Douglas J. Stipanovich
Its: Senior Corporate Counsel

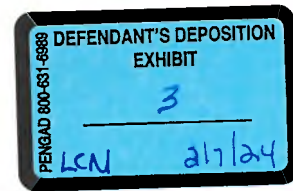
Subscribed and sworn to before me this
20 day of March, 2024



NOTARY PUBLIC
Allegheny County, Pennsylvania

My Commission Expires: 7/7/25





REPORT

Prepared for:

Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig LLP

Attn: Mr. Jason Daria

1845 Walnut Street, 21st Floor
Philadelphia, Pennsylvania 19013

By: Jarrett Waters

On: November 22, 2023

Your Reference: Vandine v. Summit Treestands, LLC and Dick's Sporting Goods, INC
Wolf Project No.: 23-0058-3775

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MSJ_JA000278



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November 22, 2023

Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig LLP
1845 Walnut Street, 21st Floor
Philadelphia, Pennsylvania 19013

Attn: Mr. Jason Daria

RE: Vandine v. Summit Treestands, LLC and Dick's Sporting Goods, INC
No.: 2:23-cv-00027
Wolf Project No.: 23-0058-3775

BACKGROUND:

Wolf Technical Services, Inc. (Wolf) was asked to consult on an incident involving a hunter that became injured while utilizing a climbing treestand. On November 6, 2020, Mr. John Vandine was injured when the Climbing Cable of his 2015 Summit Viper climbing treestand disconnected from the Seat Climber section of the treestand. The disconnected Climbing Cable allowed the Seat Climber to dislodge from the tree resulting in Mr. Vandine's fall.

At the time of the incident, Mr. Vandine had owned the Summit Viper climbing treestand for approximately five years and had utilized the treestand many times throughout the hunting seasons. The 2015 Summit Viper utilizes two independent sections, referred to as the Platform and the Seat Climber, that allow a hunter to climb a tree to gain a better vantage point and increase one's chances of harvesting an animal. The two aluminum framed sections each rely on an adjustable Climbing Cable that wraps around the tree and provides support to the framework. The Climbing Cable (cable) is a critical component that secures the climbing treestand's structure to the tree during the climbing and stationary phases of the hunt. On November 6, 2020, Mr. Vandine was climbing a tree in preparation for his afternoon hunt. While climbing the selected tree, the cable disconnected from the Seat Climber and Mr. Vandine fell from the height that he had climbed and was injured.



Figure 1: Mr. Vandine's 2015 Summit Viper climbing treestand

Wolf was asked to attend inspections of the Summit treestand and the incident site on May 4, 2023, review the provided materials, and consult regarding the design of the treestand.

CONCLUSIONS:

It is our technical opinion, based upon the available evidence, that the design of the 2015 Summit Viper climbing treestand is defective and dangerous. The current design allows the Climbing Cable to be positioned in a manner that will temporarily support the weight of the climber but provides a false sense of security as the cable and cable stops may not be fully positioned and secured within the stand's cable brackets. The temporary securing of the cable provides the climber a false positive. As the climber loads and unloads the weight from the section of the treestand the cable and cable stops can dislodge from the cable bracket resulting in the cable disconnecting from the treestand and ultimately disconnecting from the tree.

It is our opinion that the Summit QuickDraw locking spring can be engaged and disengaged as the climber ascends and descends the tree throughout the climbing treestand's normal and foreseen use. The trigger shaped spring is located in a position that is often grasped by the climber's hands during the climbing phase of the hunt and it is foreseeable that one's hand may interact with the locking spring in a manner that further engages or disengages the spring causing it not to be fully seated behind the cable stops. The Summit QuickDraw feature was intended to automatically lock behind the stops on the Climbing Cable should the cable be fully inserted into the cable bracket.

It is our technical opinion that a locking device, or safety interlock, should require a separate and intentional user action to disengage the lock and should not be able to be inadvertently disengaged during the normal and foreseen use of the equipment. The Summit QuickDraw locking spring can be inadvertently disengaged as it is in a position and orientation that is often grasped by the climber's hands during normal use. It is our opinion that a locking device, or safety interlock, that can be inadvertently disengaged through normal, expected, and foreseen use is defective and dangerous.



It is our opinion that the 2015 Summit Viper does not comply with ASTM F2122-13 (effective July 2013) Standard Practice for Treestand Safety Devices as Section 6.3 states that *Auxiliary safety devices shall be provided where additional safety precautions can be made to further protect the user. Examples include: anti-slip platforms, backbar locking devices, or tie-offs.* The 2015 Summit Viper failed to provide additional safety precautions that were feasible and incorporated into previous designs. The 2015 Summit Viper utilized a backbar locking device that could be inadvertently disengaged during normal and foreseeable use and did not prevent the false, or temporary engagement, of the cable stops in a manner that was not fully positioned within the cable bracket. Previous Viper designs incorporated a safety cover, or guard, that could not be closed unless the Climbing Cable and cable stops were safely positioned within the cable bracket. Summit U.S. Patent 5,975,242 *Climbing Tree Stand with Cable Attachment* states the moveable covers prevented the cable from becoming accidentally dislodged from the cable brackets. Mr. Vandine's 2015 Summit Viper did not include moveable safety covers.

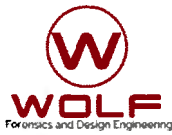
It is our opinion that the 2015 Summit Viper does not comply with ASTM F2122-13 Standard Practice for Treestand Safety Devices as Section 6.2.2 states that *Labels and warnings shall be placed on the unit accordance with Practice F2121.* It is our opinion that the 2015 Summit Viper does not comply with ASTM F2121-13 (effective July 2013) Standard Practice for Treestand Labels as Section 6.3 states that *Labels and warnings shall be placed such that they are visible to the user when mounting the treestand or climbing stick and when it is in use (sitting or standing). The following placement locations are recommended for individual units and situations:*

- 6.3.1.1 *The Top (upper) side of the platform as given in 3.2.7.*
- 6.3.1.2 *Along the top (upper) side of the backbar as given in 3.2.1.*
- 6.3.1.3 *Along the top (upper) side of a flat surface on a main structural support member.*
- 6.3.1.4 *On the top (upper) portion of a component requiring a special label or warning.*

The 2015 Summit Viper was equipped with a fabric label that was stitched into the seat back of the Seat Climber, and it is our opinion that the warning and identification label would not be visible when the user is in a seated position and would be difficult to see while the user is climbing as the seat is typically folded during the climbing phase. The location of the sewn-in fabric label does not comply with the locations outlined in the ASTM F2121 Standard Practice for Treestand Labels.

It is our opinion that some hunters do not wear a full body safety harness while ascending and descending trees while hunting. Additionally, some hunters do not wear a full body safety harness while hunting at height.

It is our opinion that designers and manufacturers of products should consider and anticipate user error and misuse during the design phases of the product and incorporate safety features that design out, or guard against, the anticipated user error or misuse.



It is our opinion that had Mr. Vandine's Summit Viper SD been equipped with safety covers or a retention pin that blocked the exposed keyway at the top of the cable bracket his Climbing Cable would not have disconnected from the stand and the accident would not have occurred.

EVIDENCE:

The evidence available to Wolf includes:

- Complaint – Civil Action John Vandine and Renee Vandine, Plaintiffs v. Summit Treestands, LLC and Dick's Sporting Goods, Inc, Defendants
- Photographs of incident Summit Viper climbing treestand
- Plaintiff Document Production
 - Answers of Plaintiff, John Vandine, to Defendant's Interrogatories
 - Answers of Plaintiff, Renee Vandine, to Defendant's Interrogatories
 - Plaintiff's Response to Defendants' Request for Production of Documents
 - Documents Produced by CPSC – FOIA Request
 - U.S Patent 5,975,242 – Climbing Tree Stand with Cable Attachment
 - U.S Patent 6,182,792 – Climbing Tree Stand with Cable Attachment
 - 2001 Summit Specialties Treestand Instruction Booklet
 - 2002 Summit Specialties Treestand Instruction Booklet
 - 2002 Summit Specialties Instruction Booklet for Cobra and Bushmaster
 - 2003 Summit Specialties Treestand Instruction Booklet for Revolution and Python
 - 2004 Summit Specialties Bushmaster and Clearshot Instruction Booklet
 - 2006 Summit Treestands Instruction Booklet for Cobra XLS
 - 2008 Summit Treestands Instruction Booklet Trophy Chair
 - U.S. Patent D, 575,411 – Foothold for Climbing Treestands
 - U.S. Patent 7,588,123 – Foothold for Climbing Treestands
 - 2015 Summit Climbing Treestands Manual
 - 2015 Summit Harness Manual
 - 2021 Summit Viper Pro SD Instructions
 - Summit Viper Level Pro SD climbing treestand recall
 - TMA table of current standards
 - ASTM F2275-21 Standard Practice for Treestand Manufacturer Quality Assurance Program
 - ASTM F3249-20 Standard Specification for Treestands, Climbing Sticks, and Tripods or Tower Stands
 - Photographs of Summit Mini Viper
 - Recall 17-041 Summit Explorer SD Climbing Stand
 - Answer to Complaint by Defendant Summit Treestands, LLC
 - Answer to Complaint by Defendant Dick's Sporting Goods, Inc.
 - Defendants Initial Disclosures
 - Summit Treestands Answer to Plaintiff's Interrogatories



- Summit Treestands Response to Plaintiffs Request for Production
- Dick's Sporting Goods Answers to Plaintiffs Interrogatories
- Dick's Sporting Goods Response to Plaintiffs Request for Production
- U.S. Patent 6,125,966 – Harness Assembly for Safely Restraining Person
- U.S. Patent 5,937,969- Hanging Tree Seat
- Color Photographs of incident tree
- Photograph of Summit QuickDraw Pro
- Defense Document Production
 - Cooper University Medical Records
 - Cooper Advance Care Medical Records
 - Additional Cooper University Medical Center Records
 - Woller Patent Application – Climbing Tree Stand with Cable Attachment
 - Various Insurance Policy Documents
 - 2015 Summit Climbing Treestands Instruction Manual
 - 2015 Summit Harness Instruction Manual
 - 2013 Scientific Testing Laboratories Summit Viper Climbing Stand TMA Report
 - George Saunders Photograph Index of Incident Treestand 5/4/2023
 - Produced materials pertaining to Carden v. Summit
 - Produced materials pertaining to Hathaway v. Summit
 - Produced materials pertaining to Kimball v. Summit
 - Produced materials pertaining to Merrell v. Summit
 - Produced materials pertaining to Saunders v. Summit
 - TMA Correspondence re: Testing
 - 2010 Warnings and Instructions for Climber Treestands
 - 2010 Warnings and Instructions for Summit Harness
 - 2011 Warnings and Instructions for Climber Treestands
 - 2011 Instructions for Ultimate Viper
 - 2012 Instructions Manual for Summit Viper
 - 2012 Warnings and Instructions for Climber Treestands
 - 2013 Warnings and Instructions for Climber Treestands
 - 2014 Warnings and Instructions for Climber Treestands
 - Complaint Wilson v. Summit
 - Photo of CD Treestand Safety
 - 2011 Warnings and Instructions for Summit Harness
 - 2010 Seat Label
 - 2011 Seat Label
 - 2012 Seat Label
 - 2013 Seat Label
 - 2014 Seat Label
 - 2015 Seat Label
 - 2012 Warnings and Instructions for Summit Harness
 - 2013 Warnings and Instructions for Summit Harness
 - 2014 Warnings and Instructions for Summit Harness



- 2010 Summit Harness Label
- 2011 Summit Harness Label
- 2012 Summit Harness Label
- 2013 Summit Harness Label
- 2014 Summit Harness Label
- 2015 Summit Harness Label
- 2011 Lineman's Belt Label
- 2012 Lineman's Belt Label
- 2013 Lineman's Treestrap label
- 2014 Lineman's Treestrap label
- 2015 Lineman's Treestrap label
- 2012 Scientific Testing Laboratories Summit Viper Climbing Stand TMA Report
- 2012 Scientific Testing Laboratories Summit Harness #83054-DOT TMA Report
- 2013 Scientific Testing Laboratories Summit Harness #83054 Source One TMA Report
- 2012 TMA Member Certification Report
- 2012 TMA Member Certification Report for climbers
- 2010 Summit Catalog
- 2011 Summit Catalog
- 2012 Summit Catalog
- 2013 Summit Catalog
- 2014 Summit Catalog
- 2015 Summit Catalog
- 2015 Summit Viper Specs
- 2015 BP Signs Summit-Final
- 2015 Mills Signs Summit – Final
- 2014 Papes Full Page
- 2015 Papes Full Page
- Summit Treestands Quality Assurance Plan REV 0 3/11/2014
- Channel Platform Beam Design 2015
- Channel Platform Cablearm Design 2015
- Cable ASM Design Drawing FBBG-120297-01 Rev 5
- Elastic Seat Strap Design Drawing 2014
- Rapid Climb Stirrup Design Drawing 2003
- Seat Drawings 2002
- Seat Stiffener Design Drawing 2015
- Summit harness Manufacturing & Assembly Procedure 2012
- Cable Retention Spring Design Drawing
- Universal Cable Bracket Design Drawings
- Universal Top V-Brace Design Drawing
- Universal Yoke Design Drawing
- Viper Platform Perimeter Design Drawing 2015



- Viper Top Complete Design Drawing
- Viper Top Perimeter Design Drawing 2015
- Deposition and exhibits of John Vandine June 13, 2023
- Deposition and exhibits of Sean Thomas September 19, 2023
- Deposition and exhibits of Officer James Alexander October 3, 2023
- Deposition and exhibits of Jake Nelson October 10, 2023
- Deposition and exhibits of Ronald Woller October 10, 2023
- Deposition and exhibits of Jake Nelson October 25, 2023
- Deposition and exhibits of Sgt. Richard Penney October 24, 2023
- Gloucester County Emergency Medical Service CAD Report
- 911 Audio Call 1 and 2
- West Deptford Police CAD report
- West Deptford Police Incident report
- West Deptford BodyCam video Vandine November 5, 2020
- Consumer Product Safety Commission Incident Report 20191217 FD606 2147375976
- CPSC Treestand Incidents 2011-2022

This investigation and analysis was conducted by Jarrett Waters of the Wolf Technical Services staff. Wolf inspected the 2015 Summit Viper treestand on May 4, 2023 at the offices of Feldman, Shepherd, Wohlgeleirnter, Tanner, Weinstock & Dodig in Philadelphia, Pennsylvania. The incident treestand location was inspected in the afternoon of May 4, 2023 behind the residence of 119 Eighth St. in West Deptford, New Jersey. In addition to the inspection of the 2015 Summit Viper climbing treestand, Wolf has also inspected, researched, analyzed, and tested a 2002 Summit Mini Viper, a 2002 Summit Viper XLS, an exemplar 2010 Summit Viper, and a 2022 Summit Viper Pro climbing treestand. Our analysis and conclusions are based on the available evidence, principles of engineering, published data, regulatory safety procedures and standards, and on Mr. Waters' education, background and experience in mechanical engineering and his experience and background in the application of treestands for hunting purposes.

Published data reviewed by Wolf include the following:

- TMS/ASTM Standards:
 - TMS 01 Standard Practice for Testing Treestand Load Capacity REV C 6/25/2010
 - ASTM F2120-06 Standard Practice for Testing Treestand Load Capacity
 - TMS 02 Standard Practice for Treestand Labels REV D 6/26/2009
 - ASTM F2121-13 Standard Practice for Treestand Labels
 - TMS 03 Standard Practice for Treestand Safety Devices REV B 4/19, 2000
 - ASTM F2122-13 Standard Practice for Treestand Safety Devices
 - TMS 04 Standard Practice for Treestand Instructions REV H 6/25/2010
 - ASTM F2123-13 Standard Practice for Treestand Instructions
 - TMS 05 Standard Practice for Testing Ladder Treestand, Tripod Stand and Climbing Stick Load Capacity REV E 6/15/2012



- ASTM F3249-20 Standard Specification for Treestands, Climbing Sticks, and Tripod or Tower Stands
 - TMS 06 Standard Test Method for Treestand Fall Arrest System REV B 3/15/2005
 - TMS 09 Standard Practice for Treestand Manufacturer Quality Assurance Program REV C 6/26/2009
 - ASTM F2275-03 Standard Practice for Treestand Manufacturer Quality Assurance Program
 - ASTM F2275-21 Standard Practice for Treestand Manufacturer Quality Assurance Program
 - TMS 11 Standard Test Method for Treestand Static Load Capacity REV D 6/24/2004
 - ASTM F2126-06 Standard Test Method for Treestand Static Load Capacity
 - TMS 12 Standard Test Method for Treestand Adherence and Static Stability 6/24/2004
 - ASTM F2125-09 Standard Test Method for Treestand Static Stability and Adherence
 - TMS 15 Standard Test Method for Repetitive Loading Capability REV D 6/15/2012
 - ASTM F2128-13 Standard Test Method for Treestand Repetitive Loading Capability
 - TMS 17 Standard Test Method for the Load Capacity of Treestand Seats 6/24/2004
 - ASTM F2531-13 Standard Test Method for the Load Capacity of Treestand Seats
 - ASTM F3412-20 Standard Terminology Relating to Treestands
-
- National Institute of Occupational Safety and Health (NIOSH) Hierarchy of Controls
 - 2022 Building Blocks of Tree Stand Safety
 - Deer and Deer Hunting Tree Stand Accidents on the Decline, Aug. 2020
 - Treestand Falls: Do they Require Formal Investigations, Pat Durkin, October 2022
 - Tree Stand-Related Injuries in Nonadmitted and Admitted Patients at a Level 2 Trauma Center in Michigan: 2015-2019, Henry Ford Health Scholarly Commons, A. Lazzara, B. Ditmer, K. Doughty, K. Reynolds, September 24, 2021
 - National Electronic Injury Surveillance System (NEISS) Estimated Falls Requiring Emergency Dept. Care
 - NEISS Data for 2010, 2015, 2020, and 2022
 - Photographs and marketing images from Summit's website
 - Photographs and marketing images from OL'MAN's website
 - Photographs and marketing images from Hawk's website
 - 2019 Footrest Accessory Installation Instructions
 - U.S. Patent 5971104 Climbing Tree Stand
 - U.S. Patent 5975242 Climbing Tee Stand with Cable Attachment
 - U.S. Patent 6182792B1 Climbing Tree Stand with Cable Attachment
 - U.S. Patent 7588123 Foothold for Climbing Tree Stands
 - U.S. Patent Application 2017/0266504 A1 Folding Climbing Stirrup



- U.S. Design Patent D575411 Foothold Pair for Climbing Treestands
- Google Earth aerial imagery

DISCUSSION:

The American Society for Testing and Materials (ASTM) defines a treestand as a *device designed to be affixed to a tree so as to permit an individual to sit or stand thereon for the purpose of attaining an elevated position from which to observe, photograph, or hunt*. Mr. Vandine was utilizing his 2015 Summit Viper climbing treestand for the purposes of hunting when he was injured on November 6, 2020. ASTM defines a climbing treestand as a *treestand that provides both the means to ascend the tree, and allow the user to remain at a desired elevation*. The Summit Viper portable climbing treestand comprises two sections that each have an adjustable Climbing Cable that is secured with cable brackets. The lower section, or Platform, is designed for standing while the upper section, or Seat Climber, is designed to allow the user to sit facing away from the tree for the purposes of hunting or face the tree for the purposes of climbing. The geometry of the aluminum framed sections is such that the user's weight is primarily supported by the cable that wraps around the tree, while the frame's yoke engages the tree providing frictional and lateral support to the assembly. Should the adjustable Climbing Cable become disconnected from either of the two cable brackets, the weight of the user would no longer be supported and the treestand section would dislodge and fall away from the tree. The Climbing Cable is a critical component to supporting the weight of the user and equipment.



Figure 2: 2010 Summit Viper with QuickDraw



Summit climbing treestands utilize a cable bracket that includes an open top and a keyway designed for a series of crimped, or swaged, cable stops to interface with the bracket. Summit has used the keyed cable brackets from as early as 1998 as reflected by early patents filed by Ronald Woller and assigned to Summit Specialties (Summit Treestands, LLC).

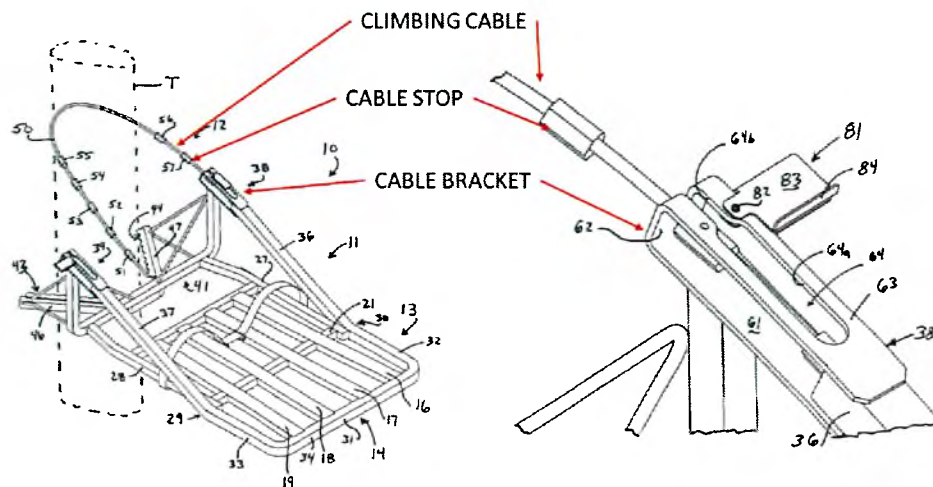


Figure 3: Diagrams from U.S. Patent 5,975,242 showing Climbing Cable, Cable Stops, and Cable Bracket

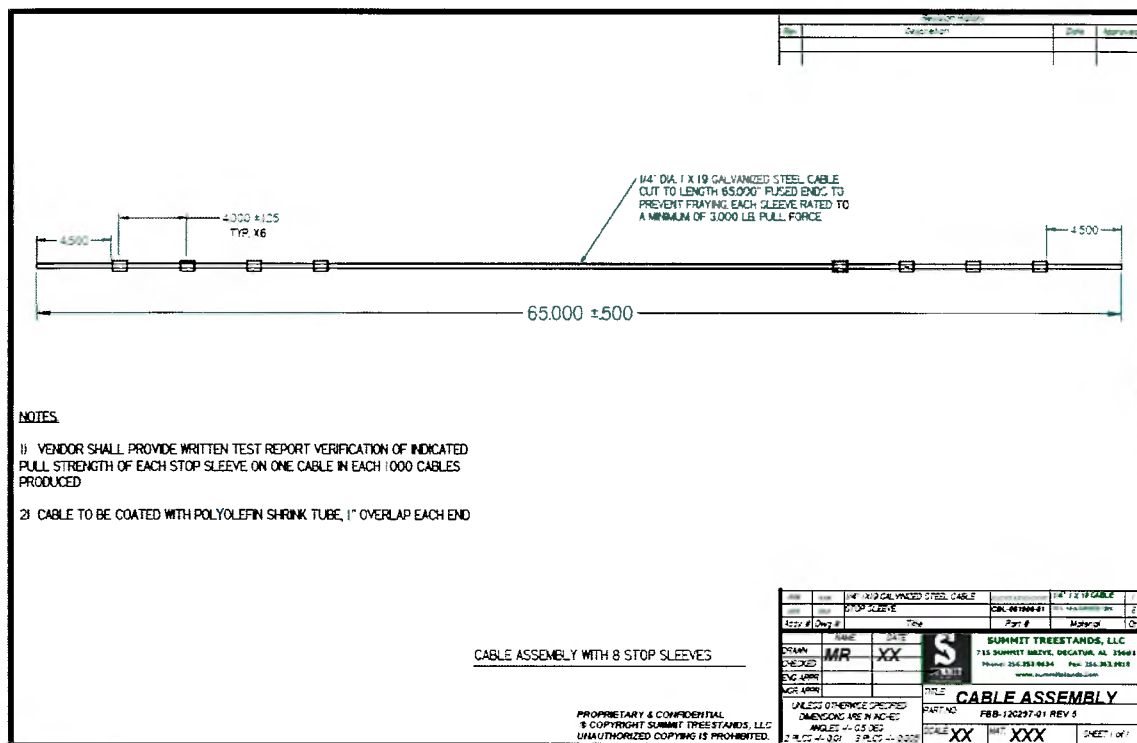


Figure 4: Summit Climbing Cable FBB-120297-01 REV 5



Summit's Climbing Cable consists of a semi-flexible 0.25" diameter steel cable and crimped, or swaged, cable stops toward the ends of the cable assembly. The cable stops allow the treestand and Climbing Cable to be adjusted for varying tree diameters. To insert the cable into the bracket, one must place the crimped cable stop through the wider portion of the keyed bracket and then push down into the cavity created by the bracket. Until approximately 2003, Summit utilized a moveable cover that would pivot and close, blocking the open keyway exposed on the top of the bracket. Around 2004, Summit eliminated the cover and elected to include a QuickDraw cable spring that is intended to lock the cable into position within the bracket. The QuickDraw spring is shaped like a trigger, mounted on the lower side of the cable bracket, and allows the user to disengage the spring with their forefinger. As the QuickDraw spring is located on the underside of the cable and bracket, is relatively obscured from the position of the user during the climbing phases of the hunt. Mr. Vandine's 2015 Summit Viper was equipped with the QuickDraw cable springs.

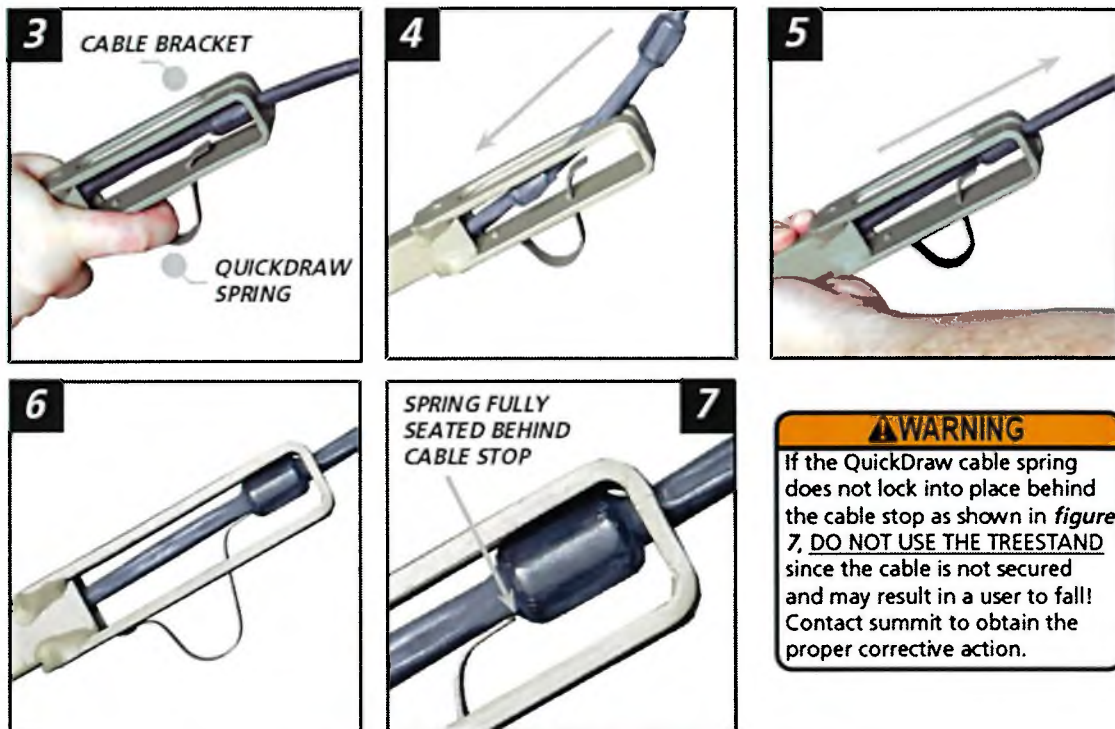


Figure 5: Summit Climbing Cable installation instructions

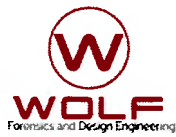


Figure 6: 2010 Summit Viper - Climbing Cable and QuickDraw springs from the perspective of the climber

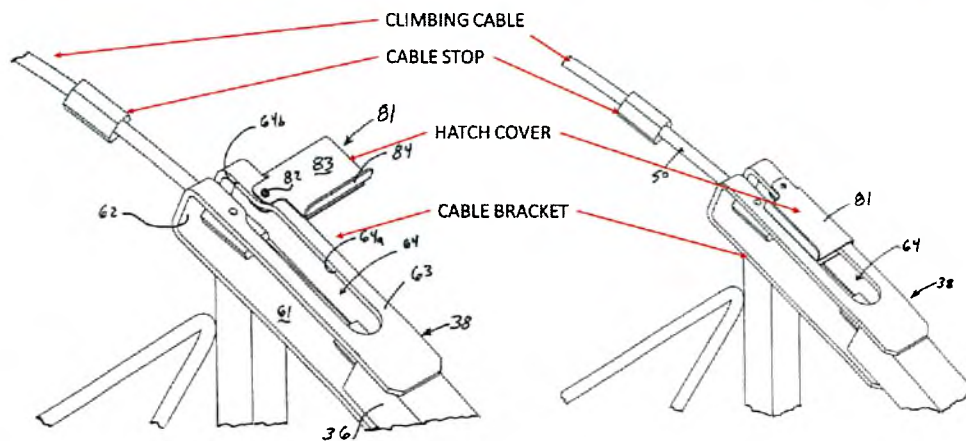


Figure 7: U.S. Patent 5,975,242 diagrams showing hatch cover in the open and closed positions

Summit Viper

Mr. Vandine's 2015 Summit Viper portable climbing treestand was inspected, photographed, and measured on May 4, 2023. The aluminum tubed framed Platform section consisted of five



channels, or slats, and measured approximately 28-inches (36-inches overall) by 20-inches and is consistent with a Summit Viper SD model climbing treestand. The Platform included an installed Summit footrest and backpack straps. The Climbing Cable was installed into the left cable bracket (facing out from tree) and the innermost cable stop was positioned in the bracket while the remainder of the cable was free. The noise cancelling plastic coating on the climbing cable showed wear and was peeled back exposing the cable and the crimped cable stops. The Platform did not include Summit's RapidClimb Stirrups or any affixed labels or warnings. Stamped onto the bottom of the cable brackets was "I 15" which is consistent with a stand produced in the 9th month of 2015.

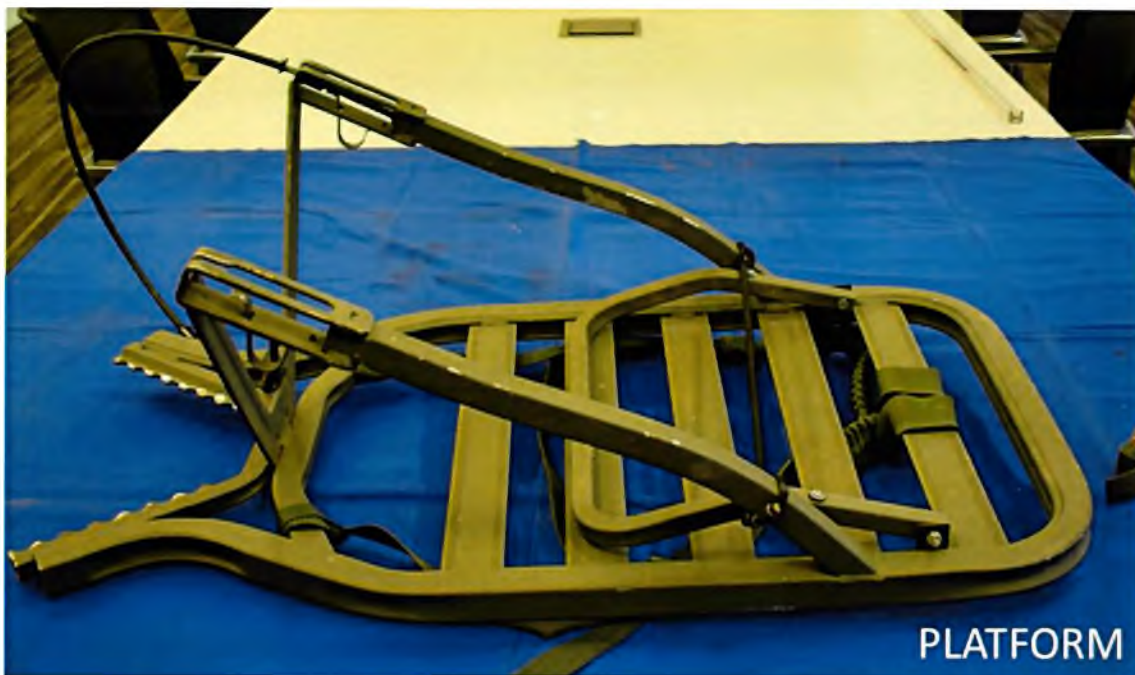


Figure 8: PLATFORM of Mr. Vandine's 2015 Summit Viper SD

The aluminum tubed framed Seat Climber measured approximately 29-inches (37-inches overall) by 22.5-inches wide and is consistent with a Summit Viper SD model climbing treestand. The Seat Climber included a camouflage seat, arm and front pads, an umbilical rope, and a bow holder. The Climbing Cable was installed into both cable brackets and the left side of the cable was positioned at the innermost cable stop, while the right side of the cable was positioned at the second innermost cable stop. Black tape was placed around the top of the camouflage arm pads. The noise cancelling plastic coating on the climbing cable showed wear and was peeled back exposing the cable and the crimped cable stops. The Seat Climber did not include any affixed labels or warnings. The assembled V Brace did include an engraving that contained verbiage regarding harness use. However, it was very difficult to read and would not be noticeable to the user as the depth of the engraving appears to be mostly filled by the powder coating process. After reviewing the produced assembly drawings, the V Brace does not include any notations regarding the addition of the warning to the bracket. The Climbing Cable



did exhibit a bend not consistent with the natural shape of the cable at the interior of the innermost cable stop that was positioned within the left cable bracket. During the insertion and removal of the cable from the stand, the bent, or kinked, section of the cable made it more difficult to insert and remove the cable from the narrow keyway of the bracket. Stamped onto the bottom of the cable brackets was "I 15" which is consistent with a stand produced in the 9th month of 2015.



Figure 9: Seat Climber of Mr. Vandine's 2015 Summit Viper SD

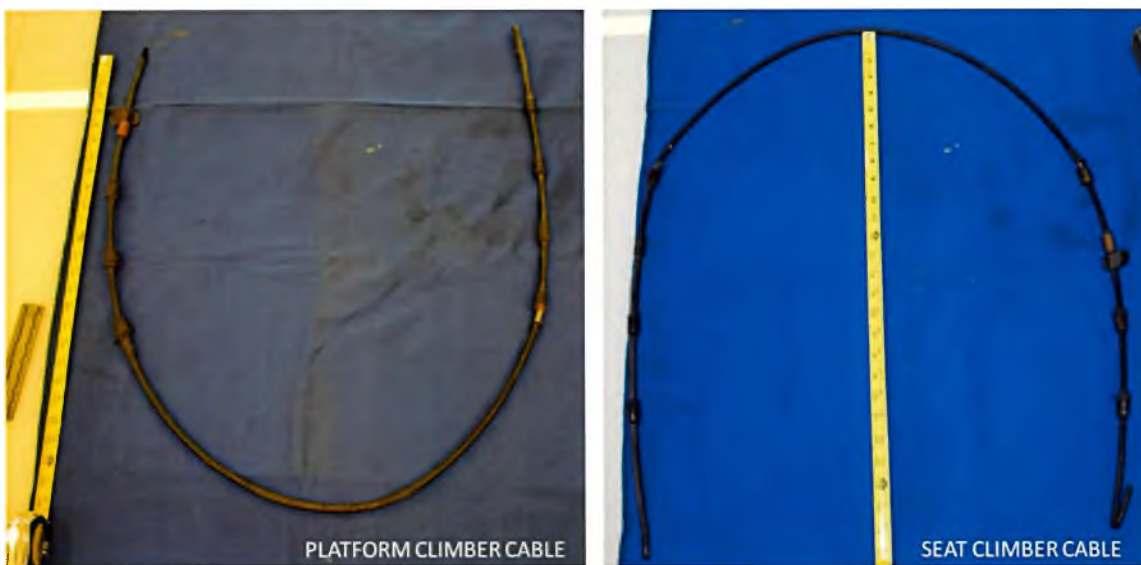


Figure 10: Climbing Cables from Mr. Vandine's 2015 Summit Viper SD



The inner faces of the cable brackets showed signs of wear that were consistent with the treestand being used on smaller diameter trees. The inner face of the upper keyway on the right (facing out from tree) cable bracket exhibited removal of the green powder coat and areas of material deformation. The areas of deformation are consistent with the cable stop interacting, interfering, and sliding over this portion of the keyway.

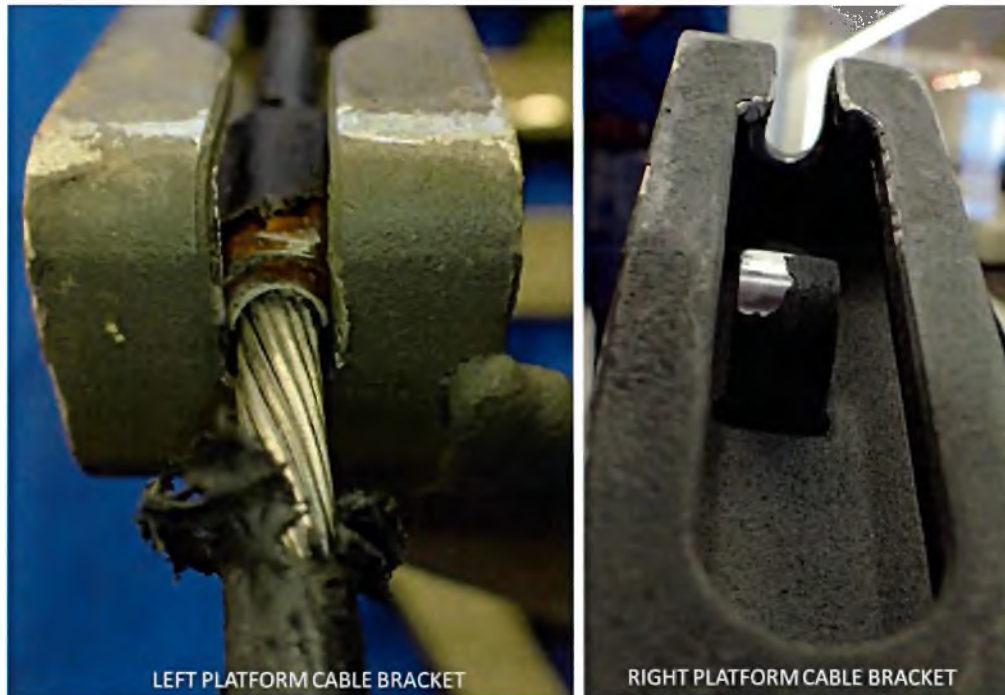


Figure 11: Left and Right Cable Brackets on Platform



Figure 12: Left and Right Cable Brackets on Seat Climber



During the inspection the spring retraction force was measured for each of the QuickDraw springs. One measurement was taken at the retraction force required for the cable stop to clear the spring, and the second taken at the force required to fully retract the QuickDraw spring to the bottom of the cable bracket. The right (facing away from tree) QuickDraw spring on the Seat Climber required less force to disengage compared to the others tested. Its force to fully retract remained similar to the other springs.

Table 1: QuickDraw Disengage and Retract forces for Mr. Vandine's 2015 Summit Viper

VANDINE SUMMIT VIPER SD		
Location	Force to Disengage [lbs.]	Force to Retract [lbs.]
PLATFORM RIGHT	NA	19.6
PLATFORM LEFT	8.2	18.9
SEAT RIGHT	6	19.5
SEAT LEFT	9.2	18.5

Site

The incident tree was inspected, photographed, and measured on May 4, 2023. The tree was accessed through a property located at 119 Eighth St., in West Deptford, New Jersey. The tree was located at a latitude and longitude of 39.870295, -75.166540 (31 ft. accuracy), and the bark was consistent with a wild cherry tree. The tree was positioned on the south side of an embankment adjacent to a marsh. At 36 inches off the ground the tree had a circumference of approximately 30.25 inches (9.63" Dia.) and at 48 inches had a circumference of approximately 29.75 inches (9.47" Dia.). At 72 inches above the ground, the tree had an approximate circumference of 28 inches (8.9" Dia.). A limb projected southwest from the trunk of the tree approximately 9 feet above the ground.

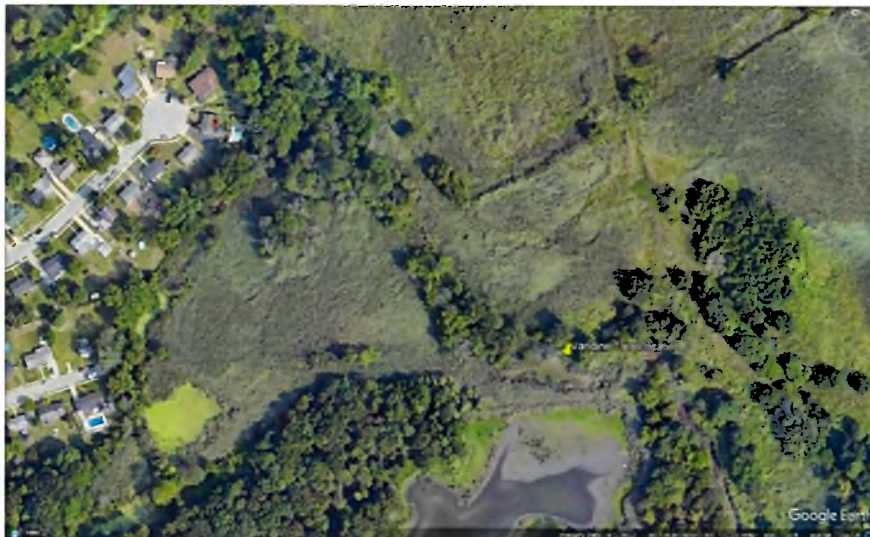


Figure 13: Approximate Incident Location marked by yellow pin



Figure 14: Incident tree as indicated by Mr. Vandine located at approximately 39.870295, -75.166540

Deposition of Mr. Vandine

Mr. Vandine gave a deposition on June 13, 2023 and provided testimony regarding the incident that occurred on November 6, 2020. Mr. Vandine testified that he was an experienced hunter and has been hunting from elevation for approximately 20 years. He stated that he purchased the Summit climbing treestand from a Dick's Sporting Goods in Deptford, New Jersey and recalled using the treestand anywhere from 100 to 200 times prior to the incident. Mr. Vandine reported that he did not recall seeing any written instructions in the box after he purchased the stand and he stated that the foot stirrups were not attached to the stand.



He testified that when setting up the treestand he always detaches the left side (facing the tree) of the cable. He stated that it is difficult to inspect underneath the cable stops and it is difficult to see cable stops and the QuickDraw spring in the dark when he is typically setting up the stand for a morning hunt.

Mr. Vandine testified that he will on occasion disconnect the climbing cable from one side of the stand to maneuver the Seat Climber above a tree limb. He stated that he would only do this for the Seat Climber and would not disconnect the cable from the Platform section of the stand. Mr. Vandine testified that he intended to hunt above the limb that projected from the subject tree on the day of the incident. Mr. Vandine stated that he was unaware that Summit warned its users about taking the cable out of for any reason at height.

Mr. Vandine testified that he would not sit on the front bar of the Seat Climber when climbing a tree, but rather support himself with his elbows.

Mr. Vandine stated that he was unaware that the product was designed to be used with a full body harness.

Mr. Vandine testified that the incident with the subject treestand occurred later in the afternoon on November 6, 2020 and that he typically hunted the subject tree approximately 12 to 15 times a year. He stated that he typically positioned the stand in the subject tree with it looking out toward the water. On the day of the incident, he testified that he climbed the tree until he encountered the limb and then removed the cable from one of the cable brackets and reattached the cable above the limb. He stated that he reconnected the cable and pressed down on the stand to inspect it. He testified that when he went to put his whole weight onto the stand in order to bring his feet up, the stand became “unbuckled”, and he fell to his right.

Deposition of Mr. Thomas

Mr. Thomas gave a deposition on September 19, 2023 regarding Mr. Vandine’s incident on November 6, 2020. Mr. Thomas testified that he was hunting with Mr. Vandine on the day of the incident but could not see Mr. Vandine from his location. After hearing Mr. Vandine’s screams, Mr. Thomas first discovered Mr. Vandine while Mr. Vandine was walking out of the woods toward the residence on 119 Eighth St. Mr. Thomas stated that after Mr. Vandine was taken to the hospital, he and a responding officer located the incident tree and treestand. Mr. Thomas testified that the Seat Climber section of the treestand was on the ground while the Platform section of the treestand was still positioned up in the tree. Mr. Thomas estimated that the Platform section was approximately 10 feet above the ground. He stated that he had to disconnect the cable from the Platform in order to remove it from the tree, however he did not have to disconnect the cable on the Seat Climber.



Deposition of Mr. Woller

Mr. Woller gave a deposition on October 10, 2023 regarding his participation in the design and implementation of Summit Treestand products. He stated that he served in roles such as operations manager and as director of engineering, before becoming a consultant for the ownership company of Summit (Pradco) in 2013. Mr. Woller stated that the cable attachment device has stayed consistent since it was introduced in 2004. He described it as a keyhole bracket design on the treestand and that the cable contains multiple stop sleeves that interact with a cable retention spring.

Mr. Woller testified that he and Summit were aware of common engineering hazard analysis techniques and the design hierarchy used to remove, reduce, and mitigate those hazards.

Mr. Woller testified that previous Summit climbing treestands utilized pivoting covers to close the opening of the keyway on the cable bracket. He stated that the covers prevented disengagement during the entire sequence of using the treestand and later described the covers as a safety feature. He also testified that the safety covers were easy to visually determine if the covers were open or closed. He stated that he thought the cost of the covers was in the five to ten cent per piece range. He reported that after 2003, Summit no longer used the pivoting safety covers on their cable attachment mechanisms.

Mr. Woller testified that at the time of the climbing attachment patent that a foreseeable use of the design was for the user or hunter to adjust the cable as he or she ascended the tree. He also testified that during his time at Summit he recalled a couple accidents involving a user that had disengaged the cable at height.

Mr. Woller testified that the QuickDraw retention spring system replaced the safety covers that were on previous models. Mr. Woller described the QuickDraw cable spring as the following: *"It is a retention spring somewhat of a, I'll call it a bar, but it's a device to prevent the axial movement of the cable inside the bracket in order to perform the first operation, which is required to disengage the cable from the bracket. If the cable cannot move, I'll say rearward down into the tube, it's impossible for it come out of the cable bracket. So the cable retention spring, the sole purpose is to prevent the cable from moving backwards. But it also provided an automatic engagement and a manual disengagement. The user had to do nothing to engage the cable and the cable retention spring, but he had to manually pull down on it in order to release the cable from the bracket."* He continued by saying *"They would have to just simply insert the cable fully down into the cable bracket and then seat it against the back of the stop—the cable bracket."* He testified that he was the initial designer of the QuickDraw cable spring and it was implemented in model year 2004.

Mr. Woller testified that if the cable spring does not perform as intended and does not secure the cable, the cable can move axially when the stand is not under load. Mr. Woller testified that the QuickDraw system was originally designed to require 25-30 pounds to fully retract the



retention spring to the bottom of the cable bracket. He stated that the trigger to the spring is not located where a hunter would place their arms or hands during the use of the stand.

Mr. Woller stated that when the load from the platform is removed the cable expands outwards and the friction of the coating and the cable bracket prevent the cable from moving axially even without engagement of the cable retention spring.

Mr. Woller testified that in 2012 every treestand that left Summit should have had a warning label sewn into the seat, but he was not sure if there were other labels installed on the stand.

Deposition of Mr. Nelson

Mr. Nelson gave depositions on October 10, 2023 and October 25, 2023 regarding the design of the Summit climbing treestand. Mr. Nelson began working for Summit Treestands in 2018. He began as a product engineer and after two years became product manager. Mr. Nelson testified that a hazard analysis includes the analysis of the foreseeable use of the product and what hazards are associated with that use. He stated that a climbing treestand that includes a cable attachment system, a potential hazard would be the disengagement of the cable from the stand.

Mr. Nelson, based upon his inspection of the treestand, believes that Mr. Vandine's incident treestand was a Viper SD model. He testified that the foot stirrups do not come assembled to the Platform of the stand, but they are standard components that come with every stand.

Mr. Nelson testified that during regular use, the design does not require the QuickDraw spring to hold the cable in place, but rather the design of the cable bracket and cable hold it in place. He stated that the design of the cable bracket and the shape of the cable itself and the friction of the outer surface prevents the cable from moving axially without the QuickDraw spring. He testified that the QuickDraw spring is considered a redundant safety and is considered a safety mechanism or device. Mr. Nelson stated that in normal use, as one removes the load while climbing, the stranded aircraft cable tries to spring back out into its natural straight shape. By doing that, it springs off the tree and also against the outer surfaces of each cable bracket creating a frictional force that causes the cable not to move. He testified that even without the QuickDraw spring engaged, under normal use the cable does not move and there is no risk of the cable coming out of the bracket.

Mr. Nelson testified that the warning label was sewn into the backrest of the seat and that there were no other warnings or labels that would have been on a 2015 model treestand.

Mr. Nelson provided testimony regarding the new design of the QuickDraw Pro system and its incorporation of locking pin. He stated that "*the main function change being that the way that the QuickDraw handle grips is actually now in the motion of the gripping the stand itself in the upright arm. So where the QuickDraw spring you pull down to then disengage the cable, the QuickDraw Pro handle allows to grip the stand and the –disengaging the retention mechanism*



all in the same motion. But – so there’s – there’s that main difference between the two. And because of the difference in the way that it opens up, if you will, disengages, it now necessitated a secondary retention pin that keeps the QuickDraw Pro handle from disengaging if you were to reach up into that area. If you were to reach up that area with the standard QuickDraw system spring, any engagement there would actually push the retention mechanism into the retaining position, where potentially with the QuickDraw Pro system, it would be the opposite of a disengagement of the retention system. So it retained the automatic locking procedure, but then because of that difference in the way that it opens, necessitated a secondary locking pin.”

Mr. Nelson stated that the “retention pin is not redundant in the fact as the spring cannot prevent it, but the retention pin does....Like it’s not a redundancy because it is the ---it is the thing, the first line of defense against an inadvertent use of that handle.”

Mr. Nelson reported that the function of the pin holder was to ensure that the retention pin stays in place once it is installed.

Mr. Nelson stated that he conducted an evaluation of the application of the original safety covers with the QuickDraw spring retention system during the time between his two depositions. He reported that the cover would interfere with the cable stop when it was properly seated in the bracket and in front of the spring and that the cover would not be able to be closed without moving the lug (cable stop) downward.

Mr. Nelson testified that there are hunters that will make the intentional choice to misuse the product and not use the entire climbing system, but that is not a foreseeable use of the climbing system.

TMS and ASTM Standards

The Treestand Manufacturer’s Association (TMA) and the American Society for Testing and Material (ASTM) publish recommended practices and standards regarding the design and design process of treestands. Summit Treestands, LLC is a member of the TMA.

A Member Certification Report (MCR) dated August 2, 2012, lists six climbing treestand products that were submitted to the TMA on July 6, 2012. The report lists the product model number as 81080 for the Viper SD climbing treestand. While the 81080 Viper SD was available in the 2012 and 2013 product offerings, Summit released a Viper SD model number 81120 in 2014. Based upon the available and provided TMA certification reports, there is no evidence that the Model 81120 Viper SD was submitted to the TMA for certification. According to the 2015 Summit Climbing Treestands Instructions, the 2015 Summit Viper SD was designated with model number 81120.



TREESTAND MANUFACTURER'S ASSOCIATION P.O. Box 15714 • Indianapolis, IN 46214 • Phone: (317) 564-7903 Fax: (317) 564-9720 www.treestand.org

Member Certification Report (MCR)

Date: 08-02-2008 (month/yyyy)
(Date MCR was completed)

Date: 07-06-12 (month/yyyy)
(Date product was submitted to test firm by member)

(TMA Member Company Name & Address)		(Testing Firm Company Name & Address)	
Summit Treestands		Scientific Testing Labs	
The Summit Co.		8047 Walker Ave	
Decatur, AL 35601 (City, ST Zip)		Baton Rouge, LA 70802 (City, ST Zip)	

Special Instructions:

- The Product Model # and Description columns should identify the product as marketed/advertised by the TMA Member at point of sale, published materials and internet web site.
- Please indicate the Type of treestand and/or product by using one of the following terms: (Climber, Fixed, Ladder, 2-Person LDR, Slick Ladder, PAS/FBH, Tripod, Tower)
- The date (month/yyyy) listed in the Date Approved column should coincide with the latest TMA standard revisions listed on Page 2 of this report. **NOTE:** Any product compliant with these standards prior to 01/01/2012 should use 01/01/2012 as Date Approved.
- The PAS/FBH listed in the PAS Included (Model #) column should be the harness included with the treestand that meets current TMS 06 Rev. G (Standard Test Method for Treestand Fall Arrest System). **NOTE:** Any PAS/FBH listed on this MCR that is not compliant with TMS 06 Rev. G is unacceptable and will invalidate the MCR.

Product Model #	Description	PAS Included (Model #)	Type	Date Approved
1. 81080	Viper SD	81064	Climber	07-06-12
2. 81081	Ultimate Viper SD	81064	Climber	07-06-12
3. 81100	Viper SDC	81064	Climber	07-06-12
4. 81073	Viper Infinity SD	81064	Climber	07-06-12
5. 81082	Goliath SD	81064	Climber	07-06-12
6. 81085	Parade SD	81064	Climber	07-06-12
7.				
8.				
9.				
10.				

Figure 15: TMA Member Certification Report Viper SD Model No.: 81080



Figure 2: A photograph of the Summit Viper climbing stand in the as received condition.



TREESTAND CONFIGURATION		PLATFORM	SEAT CLIMBER
81120	VIPER SD	5 CHANNEL	STANDARD
81543	VIPER SD INFINITY	5 CHANNEL	STANDARD
81537	VIPER LIMITED	5 CHANNEL	STANDARD
81119	GOLIATH SD	5 CHANNEL	WIDE
81118	TITAN SD	6 CHANNEL	WIDE - LONG
81116	180 MAX SD	6 CHANNEL	WIDE CURVED FRONT
81122	VIPER ELITE SD	5 CHANNEL	STANDARD ROUND TUBE
81124	MINI VIPER SD	4 CHANNEL	SHORT
81117	RAZOR SD	5 CHANNEL	HAND CLIMBER - FOLDING BAR
81115	OPENSIDE SD	4 CHANNEL	HAND CLIMBER
81121	SPECIALIST SD	5 CHANNEL ROUND TUBE	HAND CLIMBER ROUND TUBE
81123	COBRA SD	5 CHANNEL	HAND CLIMBER
81536	SPECIALIST MLB	5 CHANNEL ROUND TUBE	HAND CLIMBER ROUND TUBE

Figure 16: Summit 2015 Viper Model No.: 81120 Spec sheet and Instruction Manual

TMS and ASTM standards are considered to be a minimum requirement and do not constitute certification or an adequate and safe product design. The TMS and ASTM tests conducted by Scientific Testing Labs, for example, test static loading and repeatedly load the stand for a number of cycles, but the tests do not encompass all aspects of the stand or test all functions of the product. The QuickDraw retention spring would not be tested as the treestand remains in a static position on the surrogate tree during the completed testing and the Climbing Cable would only be inserted and installed a minimal number of times during the tests.

TMS 03 and ASTM F2122-13 (effective July 2013) Standard Practice for Treestand Safety Devices provides guidance for providing user safety devices on treestands. Section 4.1 states that this practice provides guidelines for the selection, availability, and placement of user safety devices on treestands and climbing sticks particularly for quality assurance and adequacy of auxiliary safety including:

- 4.1.1 Use of instructions in anticipation of user error or misuse.
- 4.1.2. Availability of instructions in case of their loss
- 4.1.3 User fall protection
- 4.1.4 Interconnects



4.1.5 Auxiliary security

4.1.6 Securing and pivot stabilizing for ladder treestands.

ASTM F2122-13 Section 6.2.2 states that *Labels and warnings shall be placed on the unit in accordance with Practice F2121*. ASTM F2121-13 (effective July 2013) Standard Practice for Treestand Labels as Section 6.3 states that *Labels and warnings shall be placed such that they are visible to the user when mounting the treestand or climbing stick and when it is in use (sitting or standing). The following placement locations are recommended for individual units and situations:*

6.3.1.1 *The Top (upper) side of the platform as given in 3.2.7.*

6.3.1.2 *Along the top (upper) side of the backbar as given in 3.2.1.*

6.3.1.3 *Along the top (upper) side of a flat surface on a main structural support member.*

6.3.1.4 *On the top (upper) portion of a component requiring a special label or warning.*

The 2015 Summit Viper was equipped with a fabric label that was stitched into the seat back of the Seat Climber, the location of the warning and identification label would not be visible when the user is in a seated position and would be difficult to see while the user is climbing as the seat is typically folded during the climbing phase. The location of the sewn-in fabric label does not comply with the locations outlined in the ASTM F2121 Standard Practice for Treestand Labels. The 2015 Summit Viper SD was not equipped with any other warning decals or labels according to Mr. Nelson or that were available to be inspected on May 4, 2023. The V Brace of the Climbing Seat did include an engraved warning regarding harness use; however, it was very difficult to see and the depth of the engraving appeared to be filled with the powder coating material. Warnings and instructions are often included on products at the point of use and are used to advise the user of potential hazards and provide proper instructions on how to use the product and mitigate the risk of the identified hazards. ASTM F2122-3 states that the use of instructions should anticipate user error or misuse of the product.

ASTM F2122-13 Standard Practice for Treestand Safety Devices Section 6.3 states that *Auxiliary safety devices shall be provided where additional safety precautions can be made to further protect the user. Examples include: anti-slip platforms, backbar locking devices, or tie-offs*. The 2015 Summit Viper failed to provide additional safety precautions that were feasible and incorporated into previous designs. The 2015 Summit Viper utilized a backbar locking device that could be inadvertently disengaged during normal and foreseeable use and did not prevent the false, or temporary engagement, of the cable stops in a manner that was not fully positioned within the cable bracket. Previous Viper designs incorporated a safety cover, or guard, that could not be closed unless the Climbing Cable and cable stops were safely positioned within the cable bracket. Summit U.S. Patent 5,975,242 *Climbing Tree Stand with Cable Attachment* states the moveable covers prevented the cable from becoming accidentally dislodged from the cable brackets. Mr. Vandine's 2015 Summit Viper did not include moveable safety covers.



U.S. Patents

Summit Treestands has several U.S. patents filed to protect their intellectual property regarding the design of their treestands. The 2015 Summit Climbing Treestands instruction manual states that Summit Treestands are manufactured under one or more of the following U.S. Patents:

- U.S. Patent 5975242 Climbing Tree Stand with Cable Attachment
- U.S. Patent 6182792 Climbing Tree Stand with Cable Attachment
- U.S. Patent 7588123 Foothold for Climbing Tree Stands
- U.S. Design Patent D575411 Foothold Pair for Climbing Treestands

U.S. Patent 5,975,242 Climbing Tree Stand with Cable Attachment discusses claims regarding the connection of the treestand's Climbing Cable to the cleats or cable brackets integrated into the stand. In the summary of the invention, it states that the cleats include safety covers for preventing the cable ends from being accidentally dislodged. It describes that the safety covers are moveable and can cover the keyhole-shaped opening and can be moved to uncover the openings, and with an opening covered, the cable is prevented from becoming accidentally disengaged or dislodged from the cleats. The patent describes that the use of cleats and the series of nuts on the ends of the cable also makes the climbing treestand very easy to adjust, initially or as one ascends the tree.

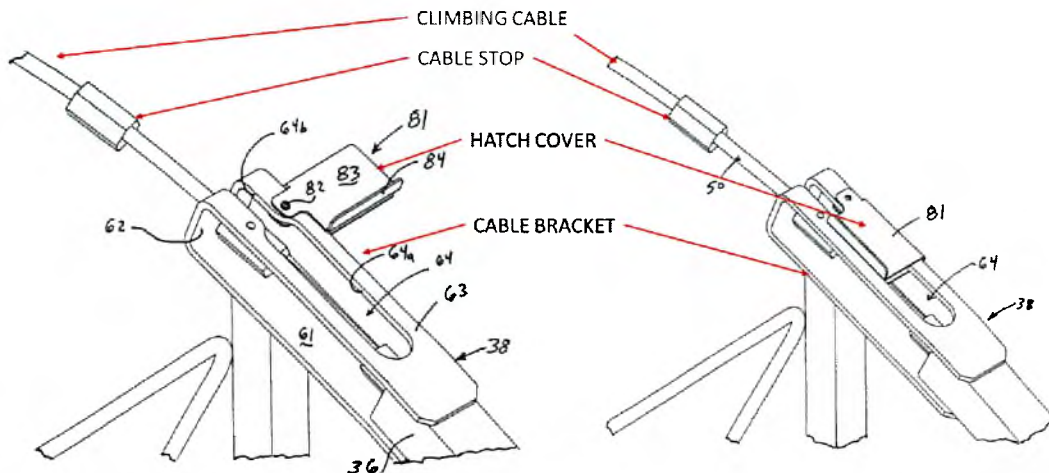


Figure 17: U.S. Patent 5,975,242 diagrams showing hatch cover in the open and closed positions

Mr. Vandine's Summit treestand did not include moveable covers as described by the patent. Summit abandoned the moveable safety cover around the 2004 model year of treestands and developed a retention spring that failed to cover the keyhole-shaped opening on the top of the cable bracket. Additionally, the patent describes that Summit was aware, and it was a



foreseeable use, that a climber could and may adjust the Climbing Cable while ascending the tree. Mr. Vandine's adjustment of the Climbing Cable while at height was foreseeable.



Figure 18: 2002 Summit Viper with safety cover compared to a 2010 Summit Viper with QuickDraw

2015 Summit Climbing Treestand Instruction Manual

The 2015 Summit Climbing Treestand Instructions manual includes warnings and instructions for the use of their climbing treestand products. In Section 2 *Tree Size/Weight Limit* the manual instructs that the stand minimum and maximum tree sizes for the models described in the manual is 8 to 20 inches in diameter. The tree Mr. Vandine was climbing was approximately 9 inches in diameter on the day of the incident. Based upon the diameter limits established by Summit, the treestand was appropriate for the selected tree. Section 3 Parts List describes the contents of the box when the new stand is purchased. It describes that the Platform is to come assembled with the RapidClimb Stirrups, Backpack Straps, and Umbilical Rope already installed on the stand. The Seat Climber is to come assembled with arm pads and a utility strap while the foam seat, and climbing cables are separate. It states that the Safety Harness, warranty card, Summit Decal, written instructions, and DVD are to be included in an Accessory Packet. A photograph included in the Scientific Testing Laboratories, Inc. Summit Viper Climbing Stand Test Report STL 21929 shows the product as it was removed from the packaging. The photograph depicts the stand with the RapidClimb Stirrups, Backpack Straps, and Umbilical Rope installed on the Platform.



3 PARTS LIST

Please call 800-353-0634 or visit <http://www.summitstands.com/contactus/> if you have any questions, if you need replacement parts, if you have any missing parts or if the included DVD does not play.

BOX CONTENTS (ALL MODELS)

DESCRIPTION
 PLATFORM (ASSEMBLED)
 INCLUDES RAPIDCLIMB STIRRUPS, BACKPACK
 STRAPS, UMBILICAL ROPE
 SEAT CLIMBER (ASSEMBLED)
 INCLUDES ARM PADS, UTILITY STRAP
 FOAM SEAT - STYLE AND CAMO MAY VARY
 CLIMBING CABLES (PAIR)
 ACCESSORY PACKET

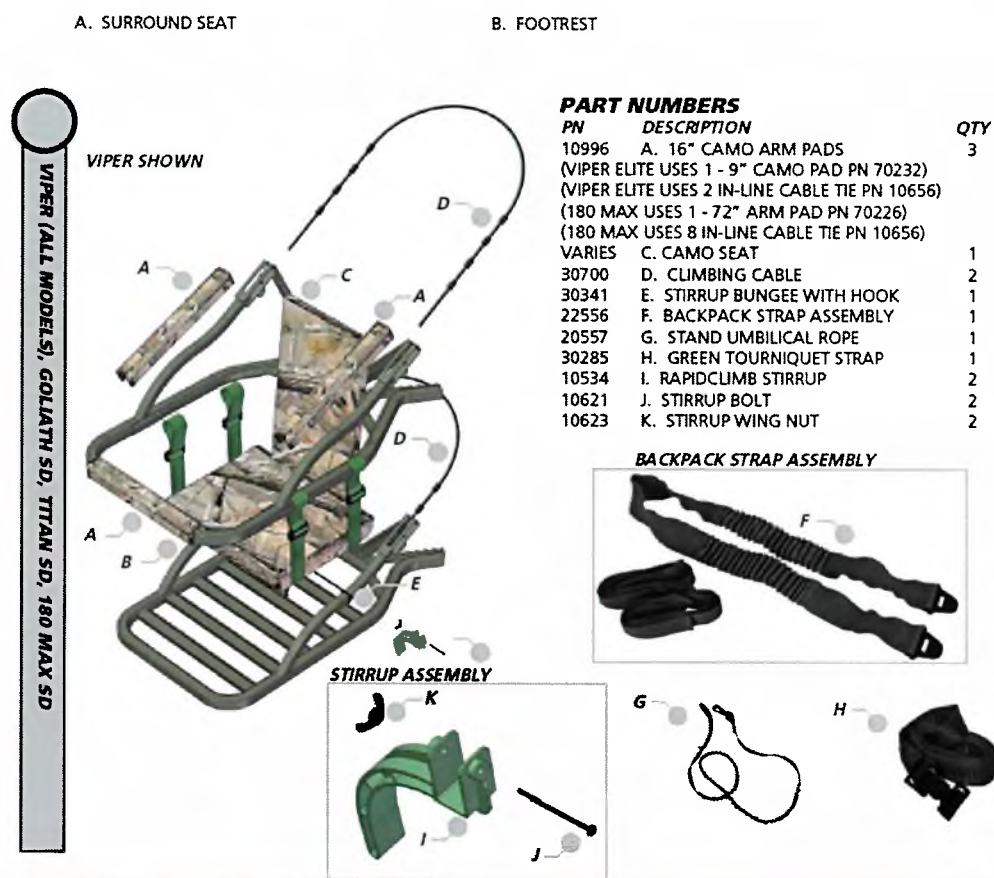
ACCESSORY PACKET (ALL MODELS)

PN	DESCRIPTION	QTY
83054	SUMMIT 4 POINT SAFETY HARNESS W/ ATTACHED SRS STRAP	1
18007	HARNESS SAFETY STRAP	1
10915	WARRANTY CARD	1
18072	SUMMIT DECAL	1
18108	WRITTEN HARNESS INSTRUCTIONS	1
	SAFETY AND INSTRUCTIONAL DVD	1

PG 2

www.summitstands.com

Figure 19: Parts List from 2015 Summit Climbing Treestands Instruction Manual



PG 3

Figure 20: Summit Viper parts diagram from 2015 Summit Climbing Treestands Instruction Manual

The Summit instruction manual includes a table designating the treestand configurations and their corresponding model numbers. The table indicates that the Viper SD treestand is identified as Model Number 81120. The photographs from the STL 21929 report indicate they received and tested a Model 81080 Viper SD treestand. The photographs depict the backstraps and umbilical rope differ from the parts diagram in the 2015 Summit instruction manual. At



this time, there is no available evidence that the assembly, or system, of the Model 81120 Viper SD treestand has been evaluated by Scientific Testing Laboratories.

TREESTAND CONFIGURATION

	MODEL	DESCRIPTION	PLATFORM	SEAT CLIMBER
GROUP A	81120	VIPER SD	5 CHANNEL	STANDARD
	81533	VIPER SD INFINITY ^B	5 CHANNEL	STANDARD
	81537	VIPER LIMITED ^B	5 CHANNEL	STANDARD
	81119	GOLIATH SD	5 CHANNEL	WIDE
	81118	TITAN SD	6 CHANNEL	WIDE - LONG
	81116	180 MAX SD	6 CHANNEL	WIDE CURVED FRONT ^A
	81122	VIPER ELITE SD	5 CHANNEL ROUND TUBE	STANDARD ROUND TUBE
	81124	MINI VIPER SD	4 CHANNEL	SHORT
B	81117	RAZOR SD	5 CHANNEL	HAND CLIMBER - FOLDING BAR
	81115	OPENSOT SD	4 CHANNEL	HAND CLIMBER
C	81121	SPECIALIST SD	5 CHANNEL ROUND TUBE	HAND CLIMBER ROUND TUBE
	81123	COBRA SD	5 CHANNEL	HAND CLIMBER
	81536	SPECIALIST MLB	5 CHANNEL ROUND TUBE	HAND CLIMBER ROUND TUBE

Figure 21: Treestand Configuration table with Model Numbers from 2015 Summit Climbing Treestands Instruction Manual



Figure 2: A photograph of the Summit Viper climbing stand in the as received condition.

Figure 22: Figure 2 from STL report showing the Viper as received for testing - Model Number received was 81080



Figure 3: A photograph of the Summit Treestands climber stand as removed from the package.

Figure 23: Figure 3 from STL report showing the Viper as unpackaged - Stirrups installed

The Summit QuickDraw retention spring is integrated into both the sit and stand climbers and the open front, or hand climbers. The manual provides instructions on how to install and remove the climbing cable from the QuickDraw retention spring, and images showing how the QuickDraw spring must lock into place behind the cable. It warns the user that if the cable stop does not lock into place that the cable is not secured and may result in a user to fall. Instructions found in the 2015 and 2022 manual vary on the depiction of a properly seated cable, however both include the cable stop between the retention spring and the face of the cable bracket. The manuals do not warn or instruct the user to avoid grasping or placing one's hands in or around the QuickDraw retention spring. Inadvertently grasping the QuickDraw retention spring while climbing may cause the retention spring to not be fully seated by the cable stop and Summit warns that this condition results in an unsecured cable and may result in a fall. Images in both the 2015 and 2022 manual depict a user grasping the area of the stand where the QuickDraw retention spring is mounted, while images on Summit's website depict climbers with their fingers engaged in the QuickDraw trigger and disengaging the spring while climbing. It is foreseeable that a climber may grasp, or inadvertently engage or disengage the QuickDraw spring while climbing and the manual instructs that any disengagement of the QuickDraw retention spring results in an unsecured cable.

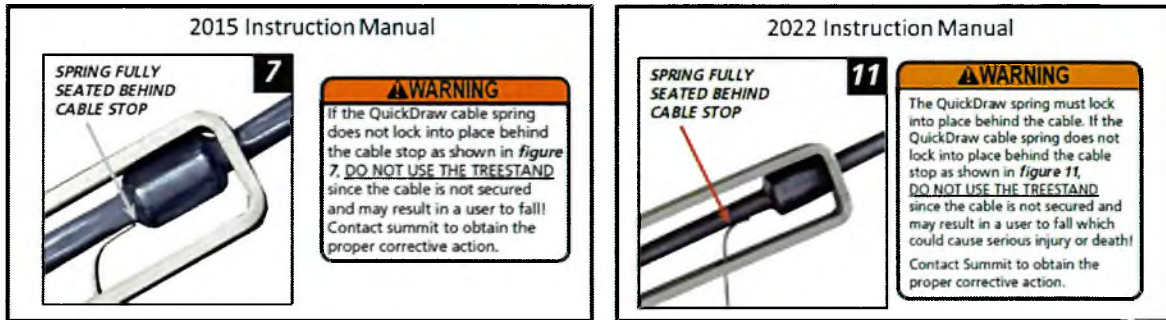


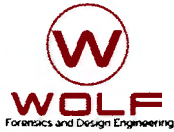
Figure 24: Spring Fully Seated Behind Cable Stop Instruction from 2015 and 2022 Manuals



Figure 25: Climber grasping QuickDraw spring and with fingers placed inside the "trigger" - Summit Website



Figure 26: Climber grasping and disengaging QuickDraw - Viper Steel Summit Website



The 2015 Summit manual provides warning to the user that the Climbing Cable should not be used if it has broken or damaged metal strands. In Section 9 Maintenance and Care it states that *the sole purpose of the plastic coating on the cable is to eliminate noise. After some use you may notice some abrasions peeling or possible cuts in the coating. This coating does not affect the performance or safety of the treestand.* The plastic coating on Mr. Vandine's climbing treestand was worn, abraded and peeling while the stranded wire cable showed no visual evidence of broken or damaged strands.

The peeled plastic coating when folded back can reduce the engagement area of the cable stop with respect to the face of the QuickDraw retention spring. Additionally, the peeling plastic coating can create resistance when the cable stop and cable are inserted through the keyed opening on the top of the bracket and may obstruct the user's view of the retention spring. The instruction manual does not warn against the issues created by the worn or peeling noise reduction coating.



Figure 27: Top View of cable bracket with peeling noise reduction coating



Figure 28: Peeling noise reduction coating between the Cable Stop and QuickDraw spring



Analysis

Wolf has also inspected, researched, analyzed, and tested a 2002 Summit Mini Viper, a 2002 Summit Viper XLS, an exemplar 2010 Summit Viper, and a 2022 Summit Viper Pro climbing treestand. The two 2002 Summit climbing treestands include the moveable safety covers described in the Summit U.S. Patent 5,975,242. The 2010 Summit Viper is equipped with the QuickDraw retention spring like Mr. Vandine's 2015 Summit Viper SD, and the 2022 Summit Viper Pro was equipped with the QuickDraw Pro retention spring that includes the sprung handle and the retention pin with the locking pin holder. Additionally, Wolf inspected Mr. Vandine's 2015 Summit Viper SD on May 4, 2023.

The climbing cable that was installed in Mr. Vandine's 2015 Summit Viper SD was inspected, measured, and photographed. As compared to new, the climbing cable had taken a more permanent set, likely from periods of loaded use around smaller diameter trees. The permanent set allows the ends of the Climbing Cable to remain closer to parallel, forming a "U" shape, as a new cable wants to spring open as described by Mr. Nelson. As the Climbing Cable ends become naturally parallel the friction between the cable and the outer edge of the cable bracket will be reduced and allow for more free axial movement within the cable bracket when the stand is unloaded. When loaded, the cable will remain fully seated, if installed fully, but when unloaded the cable stops may axially slide rearward and have an increased tendency to rely on the QuickDraw retention spring to remain in the keyway. A visual comparison of cables available to Wolf shows that use on smaller diameter trees may have an increased effect on the radius as compared to prolonged use on larger diameter trees.

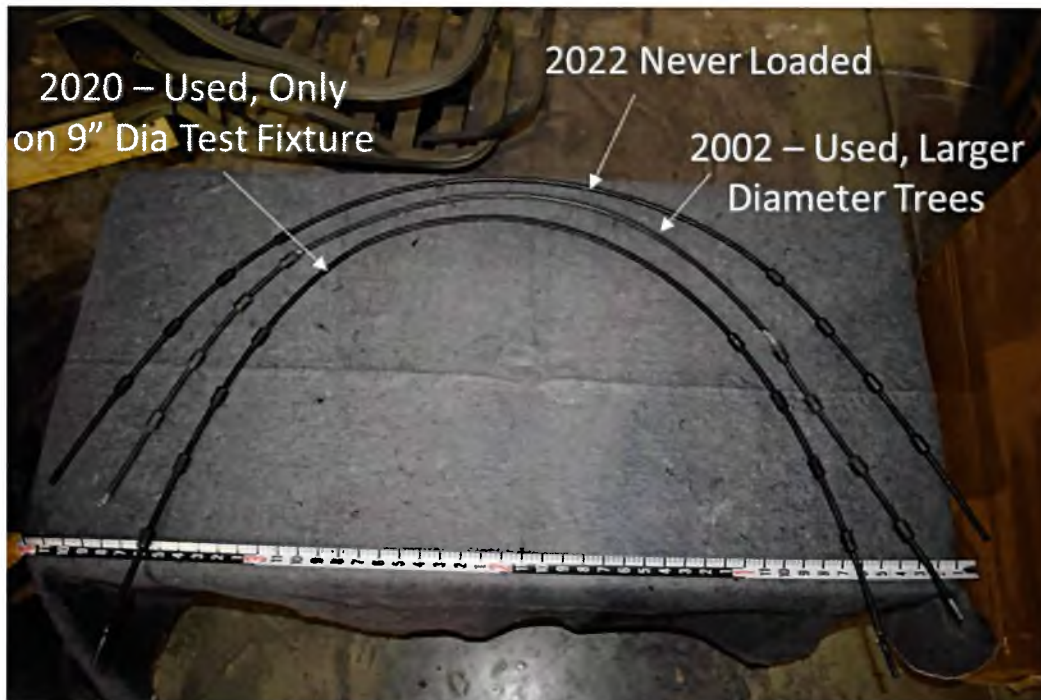


Figure 29: Summit Climbing Cable comparison



The QuickDraw retention spring is formed to an initial trigger shape during the manufacturing of the stand. The formed spring is retained to the cable bracket with a blind rivet from the underside of the bracket. Through time and actuations, it is foreseeable that the head of the rivet may become deformed and allow for additional free play within the retention spring system. The free play on an exemplar used stand was measured to be approximately $\frac{3}{32}$ " (0.0938"). The additional free play may decrease the engagement of the retention spring relative to the back of the cable stop and increase the possibility of the cable stop sliding axially rearward past the retention spring.

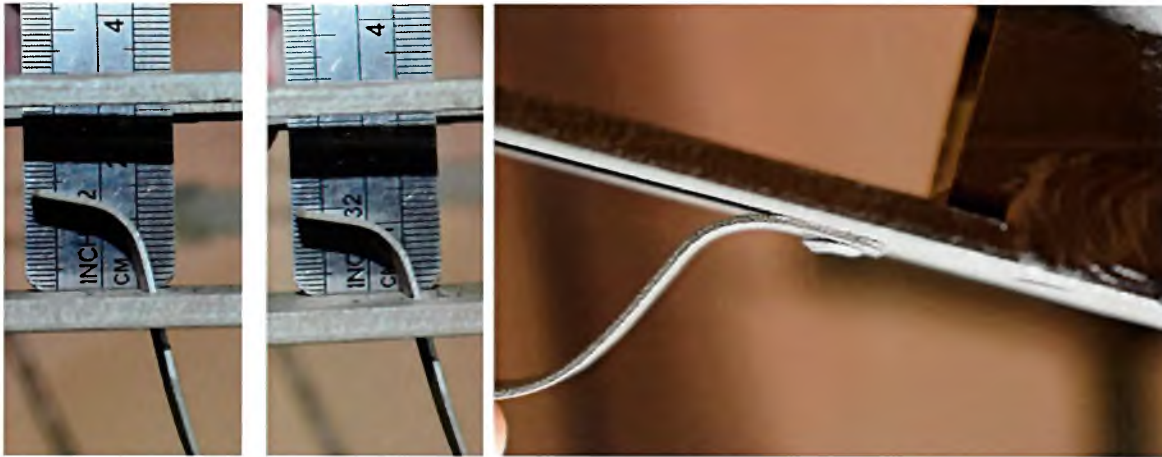


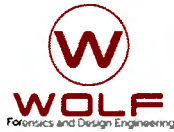
Figure 30: Exemplar 2010 Summit Viper QuickDraw free play measurement and rivet

The QuickDraw retraction and disengagement forces were measured on the 2010 Summit Viper exemplar and table showing their results are below. The forces are relatively consistent with the tested springs on Mr. Vandine's stand. The right Platform spring has an exceptionally high disengage force, but is likely due to the high starting position of the spring. While the springs are formed the same from the manufacturer, they are subject to wear and damage that may alter their shape. As their shape becomes altered, their spring characteristics will also be altered.

Table 2: Disengage and Retraction forces for 2010 QuickDraw retentions springs

2010 SUMMIT VIPER		
Location	Force to Disengage [lbs.]	Force to Retract [lbs.]
PLATFORM RIGHT	16	20.1
PLATFORM LEFT	9.8	18.9
SEAT RIGHT	8.8	14.9
SEAT LEFT	7.8	15.5

It is foreseeable that a climber's hands may engage or inadvertently become entangled with the QuickDraw retention spring. While fully grasping the QuickDraw spring forces the spring upward, an entanglement with the QuickDraw trigger may move the spring away from the cable stop defeating its retention ability. If the retention spring is out of position when the Climbing



Cable is unloaded, the Climbing Cable has the ability to slide axially rearward. This rearward motion could place the cable stop directly on top of, or behind the retention spring, and as the load is reapplied to the stand creating a ramp for the cable to exit the keyway on the open top of the cable bracket should the cable be pulled in an upward manner. This action may be exaggerated by the full grasping of the spring driving the spring upward, lifting the cable from the bracket.

The Summit QuickDraw locking spring can be engaged and disengaged as the climber ascends and descends the tree throughout the climbing treestand's normal and foreseen use. The trigger shaped spring is located in a position that is often grasped by the climber's hands during the climbing phase of the hunt and it is foreseeable that one's hand may interact with the locking spring in a manner that further engages or disengages the spring causing it not to be fully seated behind the cable stops. The Summit QuickDraw feature was intended to automatically lock behind the stops on the climbing cable should the cable be fully inserted into the cable bracket. A locking device, or safety interlock, should require a separate and intentional user action to disengage the lock and should not be able to be inadvertently disengaged during the normal and foreseen use of the equipment. The Summit QuickDraw locking spring can be inadvertently disengaged as it is in a position and orientation that is often grasped by the climber's hands during normal use. A locking device, or safety interlock, that can be inadvertently disengaged through normal, expected, and foreseen use is defective and dangerous.

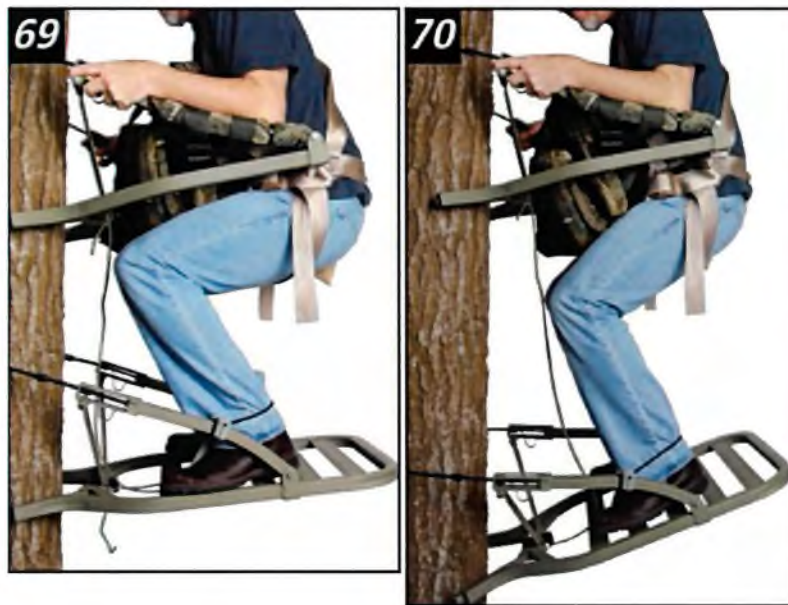
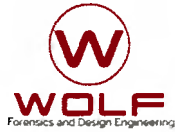


Figure 31: Example of climber grasping QuickDraw retention spring in the 2015 Summit Climbing Treestands Instruction Manual

During Wolf's inspection of Mr. Vandine's treestand it was observed that the inner face of the upper keyway on the right (facing out from tree) cable bracket exhibited removal of the green powder coat and areas of material deformation. The areas of deformation are consistent with



the cable stop interacting, interfering, and sliding over this portion of the keyway. Through testing Wolf was able to create similar marks on the exemplar 2010 Summit Viper.

While the manual attempts to warn and instruct the potential user regarding the use of the treestand, it is foreseeable that a user may not fully insert the cable stop into the keyway on the top of the bracket allowing the cable stop to be partially inserted. In this position, the Climbing Cable can and will support the weight of the user but will likely dislodge during the subsequent loading cycles. For the purposes of hunting, climbing treestands are typically attached and detached to the tree during periods of low light or darkness, impairing the user's ability to visually inspect components.

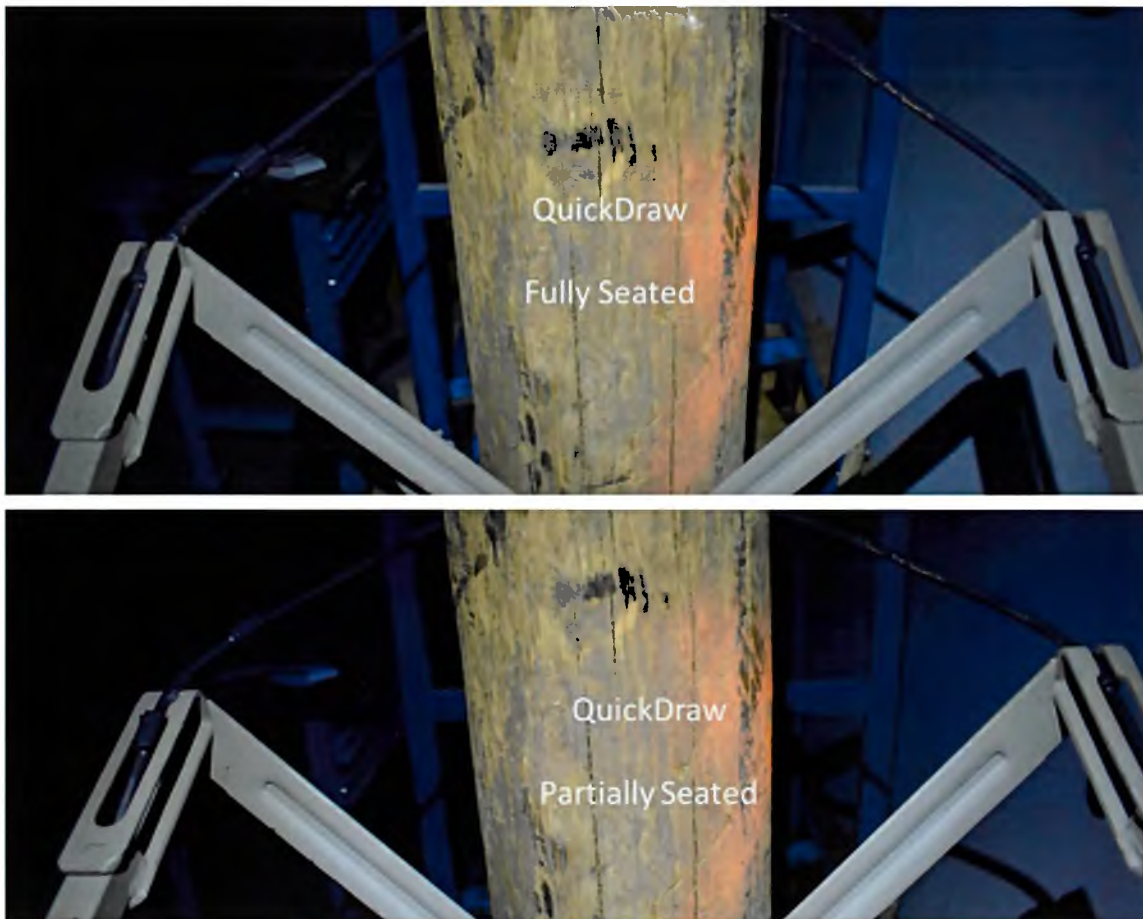


Figure 32: QuickDraw TOP: Cable fully seated into bracket. BOTTOM: Cable partially seated into bracket

The current design of the QuickDraw retention spring, and the design incorporated into Mr. Vandine's 2015 Summit Viper SD allows the Climbing Cable to be positioned in a manner that will temporarily support the weight of the climber but provides a false sense of security as the cable and cable stops may not be fully positioned and secured within the stand's cable brackets. The temporary securing of the cable provides the climber a false positive. As the climber loads and unloads the weight from the section of the treestand the cable and cable stops can



dislodge from the cable bracket resulting in the cable disconnecting from the treestand and ultimately disconnecting from the tree.

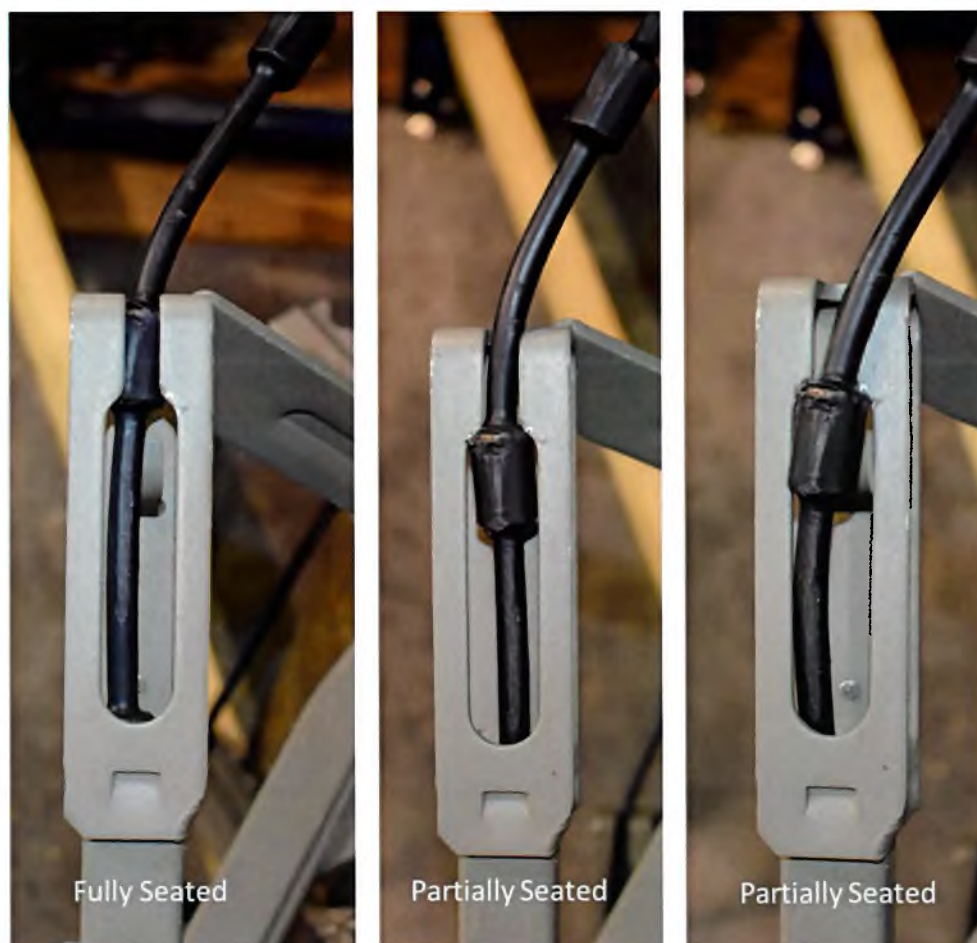


Figure 33: QuickDraw and Climbing Cable in multiple positions while holding load

Mr. Vandine's Seat Climber and Climbing Cable became disconnected and allowed the Seat Climber to dislodge from the tree and resulted in Mr. Vandine's fall. Review and inspection of his treestand did not reveal any broken or failed components. Based upon the review of the materials and review the exemplar treestands, the evidence is most consistent with two scenarios: the Climbing Cable on Mr. Vandine's stand becoming disconnected due to inadvertently grasping and actuating of the QuickDraw trigger or the cable stop was not fully inserted into the cable bracket. Either scenario is foreseeable and could have been prevented with a guard or locking device that closed the open keyway on the top of the cable bracket.



Hazard Avoidance

As a product designer part of the design process is evaluating the hazards associated with the application and integrating features that mitigate or reduce the exposure to the hazard. The National Institute for Occupational Safety and Health (NIOSH) instructs that the Hierarchy of Controls is a way of determining which actions will be best to control the exposure to the hazard. The preferred order of action based on effectiveness is: **Elimination** (remove the hazard), **Substitution** (replace the hazard), **Engineering Controls** (isolate people from the hazard), **Administrative Controls** (change the way people work), and **Personal Protective Equipment** (protect the worker with personal protective equipment).

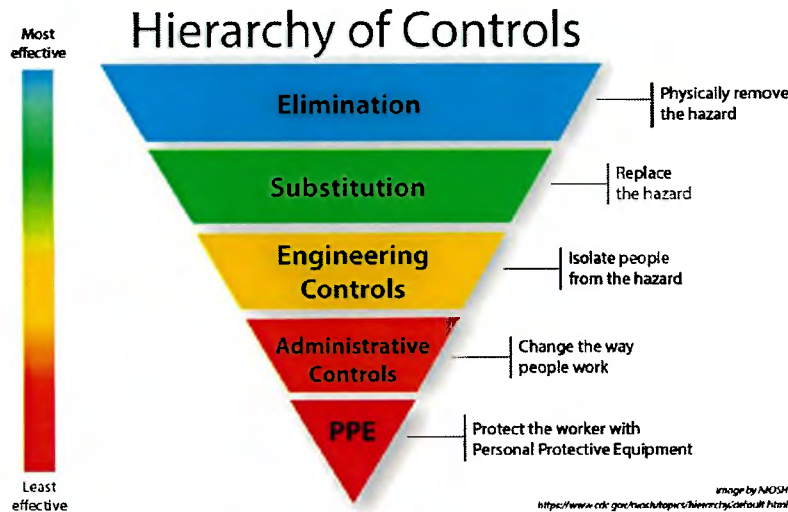


Figure 34: NIOSH Hierarchy of Controls

Safety Through Design published through the National Safety Council presents to achieve the greatest effectiveness in hazard avoidance, elimination, or control the Order of Design Precedence should be applied to all design and redesign processes. The Order of Design states the concepts are to **Design for Minimum Risk, Incorporate Safety Devices, Provide Warning Devices, Develop and Institute Operating Procedures and Training**. It states that from the beginning the top priority is that the hazards be **eliminated** in the **design** process. If the hazard cannot be eliminated, the associated risk is to be reduced to acceptable level through design selection. The next course of action, if the hazards cannot be eliminated or adequately reduced through design, is to reduce the risks through the use of fixed, automatic, or other protective safety design features (**guards**). When the identified hazards cannot be designed out or reduced through safety devices, it instructs to provide safety systems that detect hazardous conditions and include **warning signals** to alert personnel of the hazard. When the hazard cannot be reduced through design, safety devices, or warning signals, relevant operating procedures, **training**, and written **warning** advisories, signs and labels shall be used. It warns not to use operating procedures and training, or other warning or caution signs and labels as the only risk reduction method for critical hazards.



While NIOSH and the National Safety Council use different words, the design hierarchy or hierarchy of controls is a commonly implemented tool in the design process of products. The process can be simplified to **Design, Remove, Guard, Warn, and Train**.

The primary hazard when hunting from height is the risk of becoming unsupported and disconnected from the tree. As a product designer, the Hierarchy of Controls should be followed to mitigate or reduce the hazard and reduce or eliminate the exposure of the hazard to the user.

From a design perspective the strength of the materials appears to be adequate. The hazard of the cable disconnecting from the stand is difficult to remove because a connection point is required in order to wrap the climbing cable around the tree. The next step in the process would be to provide safety design features that guard against the hazard. Summit could have implemented covers, or retention pins, that blocked the open keyway on the top of the cable bracket. While the QuickDraw and the QuickDraw Pro were intended to automatically engage, they still leave the opening on the top of the bracket exposed. A moveable safety cover, as once implemented in the Summit climbing treestand design, would cover the exposed opening. Additionally, the cover, or pin, would provide tactile feedback if the cable stop was not fully inserted into the bracket as the cover would not close. Based upon the provided materials, there is no evidence that Summit conducted a documented analysis of the hazards and risks associated with the use or misuse of the Viper climbing treestand in or before 2015. Summit had the opportunity to incorporate feasible, cost-effective, previously implemented safety devices to reduce the hazard of the climbing cable being disconnected, but relied upon the QuickDraw retention spring that could become inadvertently disengaged and failed to cover the exposed keyway on the top of the cable bracket.

Warnings and user training are the last resort of the designer. If required, warnings and instructions are most effective when used at the point of use. Summit typically included a fabric warning label that was sewn into the seat cushion which would often be difficult for the user to see, tucked out of the way while climbing, and not in view of the user while sitting to hunt. Mechanical safety devices are significantly more effective than written warnings and training.

Design Alternatives

Throughout the industry, climbing treestand manufacturers address the issue of adjusting and securing the climbing cable with various mechanisms. Several manufacturers have climbing cables that have multiple mounting locations that attach to a single location on the frame of the climber, while the most common attachment method typically involves the frame of the treestand including a series of holes where the climbing cable's single attachment point is adjusted and pinned with a bolt or pin with a secondary keeper. One example of this method would include the Ol'Man Outdoors Multivision Grand 3 climbing treestand. A cable with highly visible end fittings slides down the tubes of the frame and is pinned in place along a series of adjustment holes. The pinning fastener includes a knob that has to be removed prior to removing the pin. This method of securement and attachment to the tree greatly reduces the



likelihood of a climbing cable becoming partially secured as the cable will not bear any load, additionally the pin or locking mechanism cannot be inadvertently engaged or disengaged through the normal and foreseen use of the climbing treestand. The locking pin requires an intentional and separate action to unlock as compared to the Summit QuickDraw system that can be engaged and disengaged unknowingly by the climber should one's hands interface with the mechanism.



Figure 35: OL'MAN Multivision climbing treestand with replacement cable – OL'MAN current product offering from OL'MAN website

A second example of this climbing cable adjustment and securement is the Treewalker climbing treestand.



Figure 36: Treewalker climbing treestand (circa 2008) - example of climbing cable adjustability and securement

A method found in industry that is more similar to Summit's Climbing Cable configuration is a portable climbing treestand manufactured by Hawk. The Hawk Ultra-Lite Climber has a climbing cable that includes multiple stops, or positions, along the ends of the cable, very similar to Summit's Climbing Cable. The stand includes cable brackets that have a pivoting latch mechanism that is automatically engaged upon insertion of the cable into the bracket. The AutoLatch mechanism, in combination with the bracket, fully surrounds the cable preventing its disengagement. The AutoLatch includes a secondary pin for locking the mechanism in place.

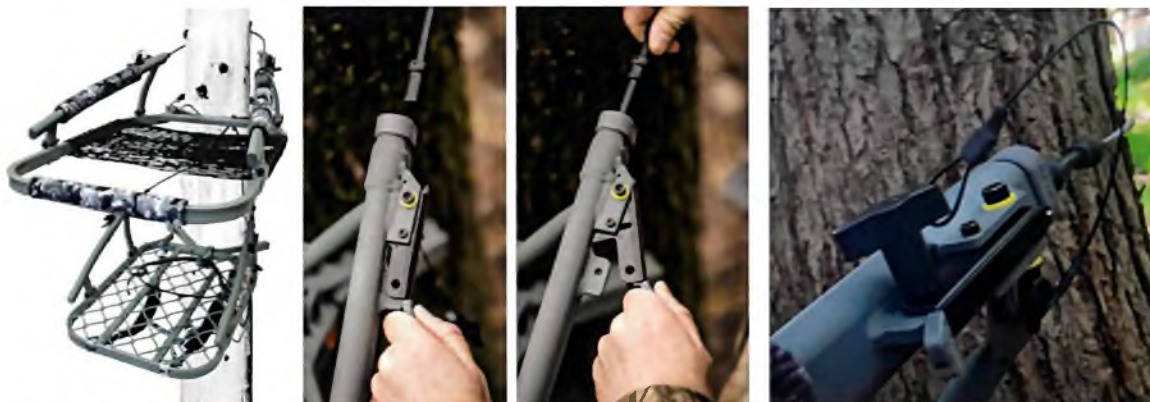


Figure 37: Hawk Ultra-Lite climbing treestand with the Auto-Latch Cable System – Hawk current product offering from Hawk website

Prior to 2004, Summit climbing treestands included a pivoting safety cover that was able to swing open and then snap shut blocking the exposed keyway on the top of the bracket and



preventing the Climbing Cable from inadvertently disconnecting from the bracket. Additionally, the fit and the location of the cover provided feedback to the user regarding the position of the cable relative to the bracket. Should the cable have not been fully inserted into the cable bracket, the cover would not be able to be closed informing the user that something was wrong with the cable installation. While simple, but likely adequate, the covers could be improved with an additional locking pin preventing the cover from inadvertently being opened. A second step could be the addition of a red or orange indicator that would be exposed while the cover is open and would be concealed when the cover is closed. This would provide additional information to the user regarding the position of the safety cover and aid in the visual inspection of the device. The proposed cover and locking pin would not interfere with the existing QuickDraw retention spring should its functionality want to be retained.

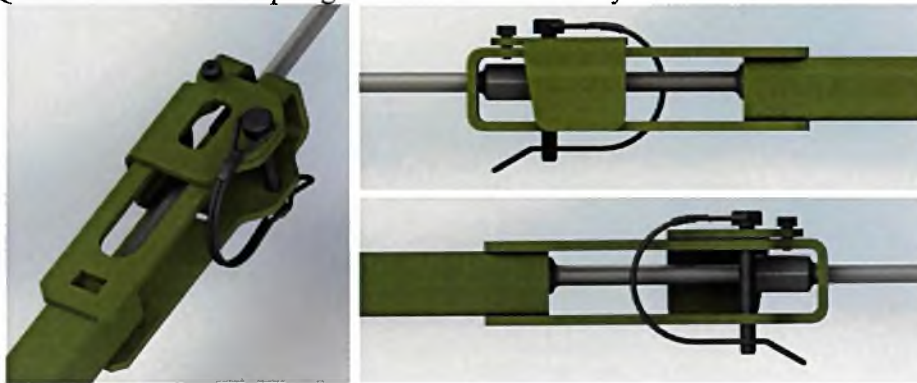


Figure 38: Alternative design that includes safety cover with locking pin



Figure 39: Alternative design that includes safety cover and locking pin shown with the cover open exposing the red indicator



Similar in concept to the cover, a retention pin could be added that blocks the exposed keyway on the top of the cable bracket. This method could utilize two plates added to the side of the bracket, or could be accomplished with two bent flanges integral to the bracket. The plates, or flanges, would include concentric holes that would allow a locking pin to be inserted and latched. The pin would be positioned such that the cable could not be released from the bracket without its removal, and as with the covers, the pin would be positioned in a manner that it could not be inserted should the cable or cable stops be out of position. The pin would include a bail, or secondary locking pin to prevent it from backing out while in use. The proposed plates and locking pin would not interfere with the QuickDraw retention spring should its functionality want to be retained.

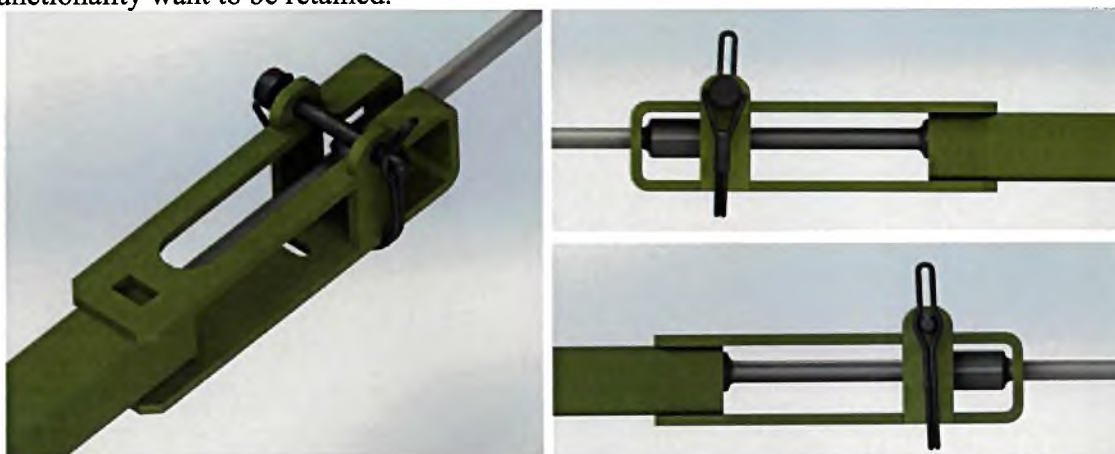


Figure 40: Alternative design with a locking pin that blocks exposed keyway

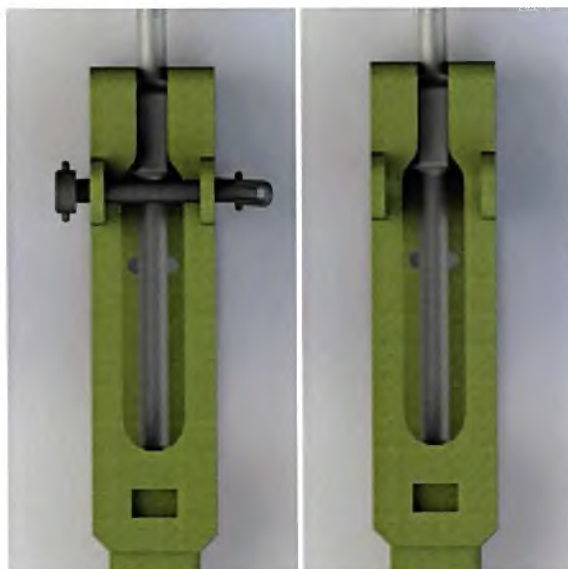


Figure 41: Alternative design shown with the locking pin installed and removed



The use of safety covers, or a retention pin, would fully secure the cable into the bracket and prevent its ability to be mispositioned or for it to escape out to the open keyway on the top of the bracket. These safety devices could be feasibly implemented with minor economic impact on the climbing treestand and are in line with the solutions found in industry. The safety benefit of the proposed designs provides significant value compared to the minor cost to implement the revisions. The implementation of the proposed safety devices was feasible, and the components were available prior to, or in, 2015 when Mr. Vandine's treestand was manufactured. There is no evidence that Summit considered the risks of removing the covers implemented prior to 2004, and there is no evidence that Summit considered the risks of failing to add safety features such as the proposed designs prior to, or in, 2015. Had Mr. Vandine's Summit Viper SD been equipped with either of these solutions his Climbing Cable would not have disconnected from the treestand. Summit recently developed a newer version of the QuickDraw system called the QuickDraw PRO that includes a sprung handle and the addition of side plates and a locking pin to the cable bracket.



Figure 42: Summit QuickDraw PRO with locking pin installed

Hunter Safety and Harness Use

An article published in Deer and Deer Hunting entitled Tree Stand Accidents on the Decline discusses the TreeStand Safety Awareness Foundation's (TSSA) tracking of tree stand falls requiring emergency department care and how the number of reported incidents have decreased over time. The article states that recently released data from 2019 from the National Electronic Injury Surveillance System (NEISS) was analyzed to calculate an estimated 1,937 people sought emergency department care as a result of an injury from a treestand fall.

TSSA published the Building Blocks of Tree Stand Safety that includes the ABC's of treestand safety. **A:** Always remove and inspect all your equipment before use – 35% of falls involved



inspection elements. **B:** Buckle your harness securely – 86% of fall victims didn't wear a harness. **C:** Connect before you leave the ground – 99% of fall victims were not attached. **D:** Destination – Share your stand and location for each hunt.

The Consumer Product Safety Commission (CPSC) tracks incidents relating to the use of specific products. Many of the reported incidents and injuries include users that fell to the ground as a result of not being connected to the tree through the use of a safety harness. However, the CPSC also reports that several individuals suffered suspension trauma and/or were asphyxiated as a result of becoming entangled in their safety harness.

A study conducted by Dr. Alan Lazzara of Henry Ford Health reviewed treestand related injuries for non-admitted and admitted patients at a level II trauma center in Michigan. Out of the 33-patient study, four cases (12%) were documented where a harness was being used and five were documented where a harness was not being used. The report states that there was no documentation about harness use or nonuse in the majority of the patient charts. The report also sampled the NEISS database to review the trend of treestand related injuries overtime and provided the following chart for the estimated yearly treestand-related injury cases:

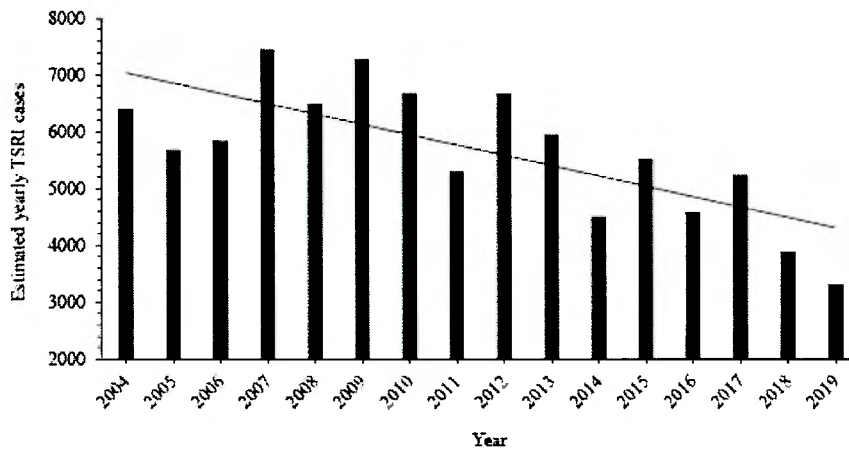


Figure 43: Tree Stand-Related Injuries, Dr. Alan Lazzara - NEISS estimates of yearly tree stand-related injuries in the United States from 2004 through 2019.

While encouraging that the reported incident numbers are decreasing, these facts are evidence that the industry is aware that users are falling short of fully inspecting their equipment and wearing their PPE, or safety harness. Training and education are important and useful, but as highlighted by the hierarchy of design and the design principles, the proper design and use of mechanical safety devices such as locks and guards are the most effective means of mitigating the risk of the equipment and user from disconnecting from the tree.



SUMMARY:

Mr. Vandine's Seat Climber and Climbing Cable became disconnected and allowed the Seat Climber to dislodge from the tree and resulted in Mr. Vandine's fall. Review and inspection of his treestand did not reveal any broken or failed components. Based upon the review of the materials and review the exemplar treestands, the evidence is most consistent with two scenarios: the Climbing Cable on Mr. Vandine's stand becoming disconnected due to inadvertently grasping and actuating of the QuickDraw trigger or the cable stop was not fully inserted into the cable bracket. The 2015 Summit Viper did not include any safety devices that would have prevented either of these scenarios.

Based upon the available evidence, the design of the 2015 Summit Viper climbing treestand is defective and dangerous. The current design allows the Climbing Cable to be positioned in a manner that will temporarily support the weight of the climber but provides a false sense of security as the cable and cable stops may not be fully positioned and secured within the stand's cable brackets. The temporary securement of the cable provides the climber a false positive. As the climber loads and unloads the weight from the section of the treestand the cable and cable stops can dislodge from the cable bracket resulting in the cable disconnecting from the treestand and ultimately disconnecting from the tree. Review of the produced materials indicates that Summit had knowledge of previous claims of the Climbing Cable becoming disconnected from the treestand.

The Summit QuickDraw locking spring can be engaged and disengaged as the climber ascends and descends the tree throughout the climbing treestand's normal and foreseen use. The trigger-shaped spring is located in a position that is often grasped by the climber's hands during the climbing phase of the hunt and it is foreseeable that one's hand may interact with the locking spring in a manner that further engages or disengages the spring causing it not to be fully seated behind the cable stops. The Summit QuickDraw feature was intended to automatically lock behind the stops on the climbing cable should the cable be fully inserted into the cable bracket.

A locking device, or safety interlock, should require a separate and intentional user action to disengage the lock and should not be able to be inadvertently disengaged during the normal and foreseen use of the equipment. The Summit QuickDraw locking spring can be inadvertently disengaged as it is in a position and orientation that is often grasped by the climber's hands during normal use. It is our opinion that a locking device, or safety interlock, that can be inadvertently disengaged through normal, expected, and foreseen use is defective and dangerous and not reasonably safe for foreseeable uses and misuses.

The 2015 Summit Viper does not comply with ASTM F2122-13 Standard Practice for Treestand Safety Devices as Section 6.3 states that Auxiliary safety devices shall be provided where additional safety precautions can be made to further protect the user. Examples include: anti-slip platforms, backbar locking devices, or tie-offs. The 2015 Summit Viper failed to provide additional safety precautions that were feasible and incorporated into previous designs. The 2015 Summit Viper utilized a backbar locking device that could be inadvertently



disengaged during normal and foreseeable use and did not prevent the false, or temporary engagement, of the cable stops in a manner that was not fully positioned within the cable bracket. Previous Viper designs incorporated a safety cover, or guard, that could not be closed unless the Climbing Cable and cable stops were safely positioned within the cable bracket. Summit U.S. Patent 5,975,242 Climbing Tree Stand with Cable Attachment states the moveable covers prevented the cable from becoming accidentally dislodged from the cable brackets. Mr. Vandine's 2015 Summit Viper did not include moveable safety covers.

The 2015 Summit Viper does not comply with ASTM F2122-13 Standard Practice for Treestand Safety Devices as Section 6.2.2 states that Labels and warnings shall be placed on the unit accordance with Practice F2121. The 2015 Summit Viper does not comply with ASTM F2121-13 Standard Practice for Treestand Labels as Section 6.3 states that *Labels and warnings shall be placed such that they are visible to the user when mounting the treestand or climbing stick and when it is in use (sitting or standing). The following placement locations are recommended for individual units and situations:*

- 6.3.1.1 *The Top (upper) side of the platform as given in 3.2.7.*
- 6.3.1.2 *Along the top (upper) side of the backbar as given in 3.2.1.*
- 6.3.1.3 *Along the top (upper) side of a flat surface on a main structural support member.*
- 6.3.1.4 *On the top (upper) portion of a component requiring a special label or warning.*

The 2015 Summit Viper was equipped with a fabric label that was stitched into the seat back of the Seat Climber, and the warning and identification label would not be visible when the user is in a seated position and would be difficult to see while the user is climbing as the seat is typically folded during the climbing phase. The location of the sewn-in fabric label does not comply with the locations outlined in the ASTM F2121 Standard Practice for Treestand Labels.

Injury related studies and industry safety/training materials indicate some hunters do not wear a full body safety harness while ascending and descending trees, or while hunting. Designers and manufacturers of products should consider and anticipate user error and misuse during the design phases of the product and incorporate safety features that design out, or guard against the anticipated user error or misuse.

Had Mr. Vandine's Summit Viper SD been equipped with safety covers or a retention pin that blocked the exposed keyway at the top of the cable bracket his climbing cable would not have disconnected from the stand and the accident would not have occurred.

ADDITIONAL WORK:

The information contained in this report and the conclusions reached are based on information available at the time this report was prepared. We reserve the right to amend and/or modify this report if any new and/or significant data that could impact this investigation becomes available. We recommend that if any additional statements, depositions, photographs, evidence or other information documenting this incident become available, that they be supplied to Wolf



for our review so that we may render any further opinions in any future report, deposition, or testimony.

Respectfully submitted,

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Jarrett Waters

Technically reviewed by,

A handwritten signature in black ink, appearing to read 'William E. Dickinson', written over a horizontal line.

William E. Dickinson, P.E.